

## **Annex 1 - Specification**

### **Content**

- Section 1: Introduction to Contract Work**
- Section 2: Delivering the Service**
- Section 3: General Provisions**
- Section 4: Service Standards**
- Section 5: Carrying out Controlled Work**
- Section 6: Payment for Controlled Work**
- Section 7: Carrying out Licensed Work**
- Section 8: Payment for Licensed Work**
- Section 9: Housing / Debt**
- Section 10: Education**
- Section 11: Discrimination**
- Section 12: Family**

## **SECTION 1: INTRODUCTION TO CONTRACT WORK**

### **1. DEFINITIONS**

- 1.1 Unless otherwise stated, definitions which are set out in Legal Aid Legislation, the Standard Terms and Category Definitions 2013 apply to this Specification and are not repeated here and the following terms have the following meanings unless the context requires otherwise:

*"Adviser"* means any of your personnel who carry out Contract Work;

*"Authorised Litigator"* means an individual who conducts litigation services as an authorised person in accordance with the Legal Services Act 2007;

*"Backdoor Calls"* means a call made by a Client to your Backdoor Telephone Number;

*"Backdoor Telephone Number"* means your direct 0845 number which Clients use to contact Advisers directly;

*"Business Hours"* means 9.00am to 8.00pm Monday to Friday and 9.00am to 12.30pm on Saturdays (in each case excluding any day which is a public or bank holiday in England and Wales);

*"Case Handling System"* or *"CHS"* means the electronic Case handling system used by the Operator Service to manage allocation of initial contact made from potential Clients to CLA;

*"Case Involvement Standard"* means the standard for Supervisors set out at Paragraphs 4.11 to 4.13;

*"Case Management System"* or *"CMS"* means the Case management system used by you to record Contract Work;

*"Caseworker"* has the meaning given at Paragraph 4.24;

*"Category"*, *"Categories"*, *"Category of Law"* or *"Category of Work"* means the definitions of each category of law that apply to this Specification, which are set out in the Category Definitions 2013;

*"Category Definitions 2013"* means the document published on our website, that outlines the Categories of Work that apply to this Specification, which is incorporated into this Contract. This document may be amended by us provided that had it been a Contract Document such amendments would not have been prohibited by Clause 13.1 of the Standard Terms;

*"Category Specific Rules"* means Sections 9 to 12 of this Specification, and all other provisions of this Specification which are expressed to apply only to a particular Category or Categories;

*"CLA Reference Number"* means the unique reference number allocated to each Case by the Operator Service";

*"Contract Guide"* means a guide issued by us specifically in relation to the Contract and published on our website;

"*Controlled Work*" has the meaning given in regulation 2 of the Procedure Regulations;

"*Core Hours*" means 9am to 5pm Monday to Friday excluding bank and/or public holidays in England and Wales;

"*Costs Limit*" means as described in regulation 35(1)(a) of the Procedure Regulations;

"*DDI*" means the full direct line telephone number of the Adviser, including the area code;

"*Delegated Functions*" means a function of the Director or the Lord Chancellor delegated to you;

"*Easy Read*" means an accessible format designed for people with a learning disability including the use of simple jargon free language, shorter sentences and supporting images;

"*Emergency Representation*" has the meaning given in regulation 2 of the Procedure Regulations;

"*Escape Fee Cases*" means as described at Paragraphs 6.3 to 6.9;

"*Escape Fee Threshold*" means as described in Paragraph 6.3;

"*Exempted Person*" has the meaning given to it in regulation 20 of the Procedure Regulations being, at the Contract Start Date, an individual who:

(a) has been deprived of their liberty;

(b) is a child; or

(c) is a previously assessed person with a linked problem ("*previously assessed person*" and "*linked problem*" being as defined in regulation 20 of the Procedure Regulations);

"*Face-to-Face Advice*" means Contract Work provided (in whole or in part) in the presence of the Client;

"*Financial Regulations*" means regulations made under section 21 of the Act;

"*Form of Civil Legal Aid*" has the meaning given in regulation 3 of the Procedure Regulations and regulation 12(3) of the Merits Regulations;

"*Frontdoor Calls*" means calls made to CLA transferred directly from the Operator Service to you;

"*Hourly Rates*" means payment on the basis of time reasonably spent on a Case where payment is based on the rates set out in the Legal Aid Legislation in relation to Licensed Work and Cases and Hourly Rates (Controlled Work) Annex (as applicable);

*"Interpreter Service"* means the interpreter service that we direct you to use from time to time or, if cheaper, an alternative interpreter service that you may engage;

*"Legal Competence Standard"* means the standard for Supervisors as described in the Category Specific Rules;

*"Legal Help"* has the meaning given in regulation 4 of the Procedure Regulations and regulation 13 of the Merits Regulations;

*"Legal Representation"* has the meaning given in regulation 18 of the Merits Regulations;

*"Licensed Work"* has the meaning given in regulation 2 of the Procedure Regulations;

*"Merits Regulations"* means The Civil Legal Aid (Merits Criteria) Regulations 2012;

*"Office"* means an office which you occupy (either continuously or part time) and which satisfies the requirements of Paragraphs 4.28 to 4.31;

*"Online Portal"* means a secure website hosted by the Operator Service which enables you to provide and Clients to receive online legal advice;

*"Operator Service"* has the meaning given to it in the Standard Terms;

*"Paragraph"* means unless otherwise specified, one of the Paragraphs of this Specification;

*"Prescribed Rate"* means an Hourly Rate prescribed in the Legal Aid Legislation;

*"Procedure Regulations"* means The Civil Legal Aid (Procedure) Regulations 2012;

*"Procurement Areas"* means the geographical areas specified by us under Paragraph 3.2;

*"Protected Party"* has the meaning given to it in regulation 2 of the Procedure Regulations;

*"Reasonable Adjustments"* means an adjustment to the means by which you undertake Contract Work to enable a Client who has a disability, to explain their problem and to understand and act on your advice, and is in compliance with the requirements of the Equality Act 2010, such adjustment may include providing a call back service, electronic communication, postal communication, BSL Interpretation Service, mini-com and text relay, web-cam service, advice via a third party, Translation Service or alternative formats and a free postal service;

*"Referral"* means assisting the relevant person to identify an appropriate organisation who will assist such person with the relevant matter and you

make contact with relevant organisation, on such person's behalf and transfer them to such organisation;

"*Remote Advice*" means Contract Work provided in the manner specified in Paragraph 2.30 of the Specification or by such other means as we may specify pursuant to Paragraphs 2.49 to 2.50 of the Specification;

"*Remuneration Regulations*" means regulations made under section 2(3) of the Act;

"*Review*" is where a Client, potential Client, Exempted Person or potentially Exempted Person (as applicable) has requested you to review a Determination or Withdrawal of a Determination as described in the Procedure Regulations;

"*Rota Hours*" has the meaning given to the term in Paragraph 2.3;

"*Section*" means, unless otherwise specified, one of the 12 sections of this Specification;

"*Service Adaptations*" means an adaptation to the means by which you undertake Contract Work to enable a Client to understand and act on your advice, such adaptation may include but will not be limited to providing a call back service, electronic communication, postal communication, Interpreter Service, web-cam service, advice via a third party, Translation Service or alternative formats and a free postal service;

"*Service Standards*" means the requirements set out in Section 4 together with any other requirements so designated in Category Specific Rules;

"*Signpost*" or "*Signposting*" means supporting the caller or Client (as applicable) in identifying suitable sources of alternative advice or information provided that such caller or Client (as applicable) will retain responsibility for making contact themselves;

"*Special Controls Review Panel*" is described in regulation 58(3) of the Procedure Regulations;

"*Supervisor*" means a person who meets the Supervisor standards set out at Paragraph 4.8;

"*Supervision Standard*" means the standard for Supervisors set out at Paragraphs 4.14 to 4.19;

"*Translation Service*" means the translation service that we direct you to use from time to time, or if cheaper, an alternative translation service that you may engage;

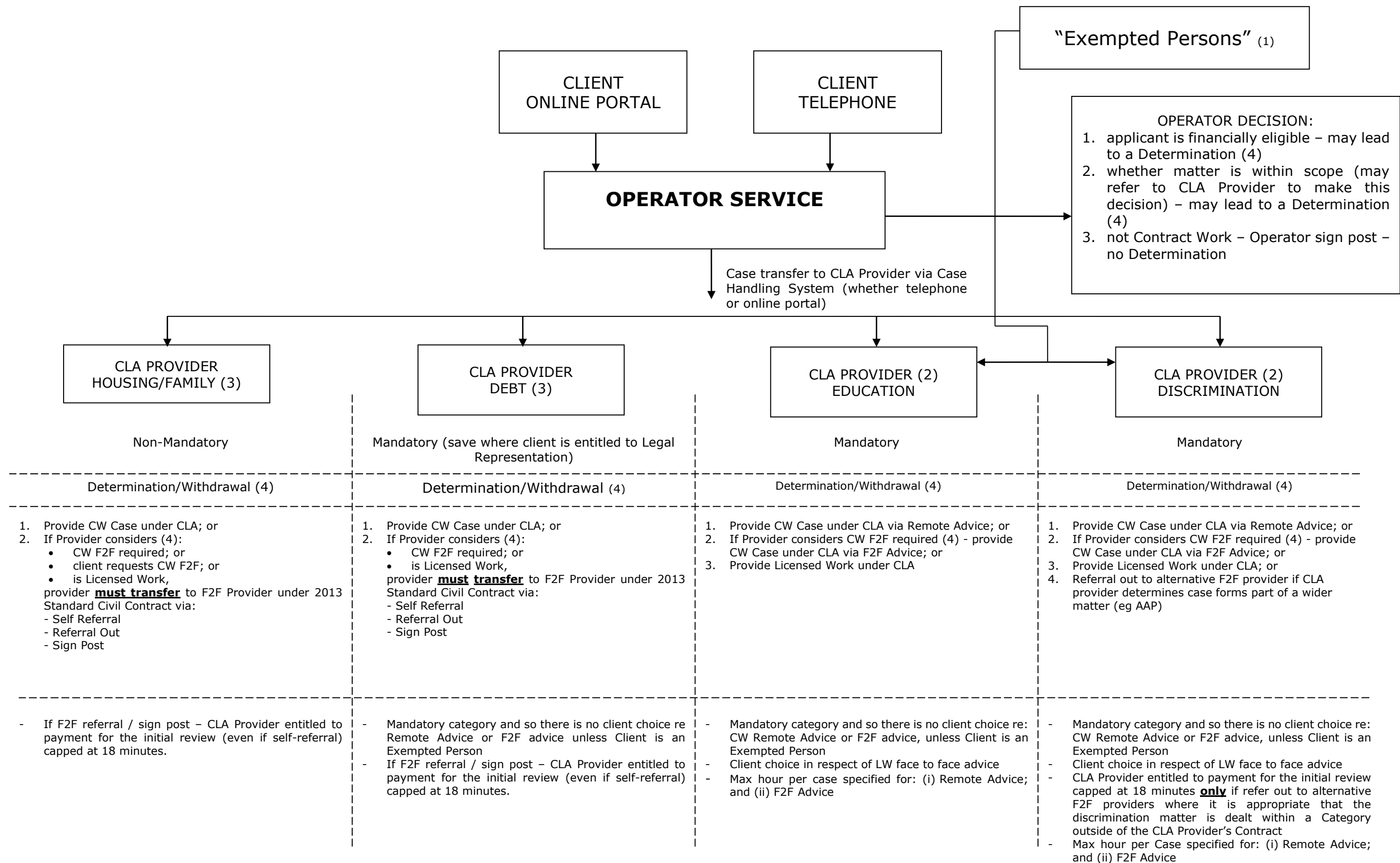
"*Upper Tribunal*" means the Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (as amended);

"*Vulnerable Persons Policy*" means the vulnerable persons policy set out in the CLA Operations Manual; and

"*web-cam*" means a video camera that feeds its images in real time to a computer or computer network for transmission over the internet.

## **FLOW CHART**

- 1.2 The flow chart below in Paragraph 1.3 provides an overview of the process by which members of the public will access CLA services. You will provide legal advice to Clients referred to you from the Operator Service, and Exempted Clients who may be referred to you by the Operator Service or who may contact you direct, as shown in the flow chart. The Operator Service is the initial stage of CLA where individuals will have their problems diagnosed, financial eligibility assessed and a series of options presented to them about how the problem should be dealt with. Individuals who are deemed eligible by the Operator Service will be directly transferred from the Operator Service to you.
- 1.3 Flow Chart:



(1) Determination Assessment is included within the initial steps (as described in Paragraphs 2.9 to 2.16 below) unless, upon assessment you confirm that an individual does not qualify as an Exempted Person and in which case the individual must be referred to the Operator Service and you will not receive any payment in respect of the 18 minute review.

(2) Licensed work may be provided under this Category of Law

(3) The Operator will transfer Debt and Housing Contract Work (but not family) together when referring Cases to specialist telephone providers

(4) Determination/Withdrawal – to be made by your Advisers in respect of (i) scope; (ii) merits; (iii) financial eligibility; and (iv) whether the matter is Contract Work. For Housing & Family (Non-mandatory), there is no decision made about the 'channel' for advice. For (Debt, Education & Discrimination (Mandatory) there is a decision made about the channel of advice.

- 1.4 Subject to Paragraphs 1.5 and 1.6, you will only provide Remote Advice under this Contract.
- 1.5 You may only provide Remote Advice in such of the:
- (a) Housing;
  - (b) Family;
  - (c) Debt;
  - (d) Education; and
  - (e) Discrimination,
- Categories of Law as are specified in your Cases and Hourly Rates (Controlled Work) Annex. Remote Advice will include the supply and performance of all activities and services that form part of an end to end, non face-to-face legal advice service, including the services set out in this Specification.
- 1.6 You may only provide Face-to-Face Advice under the Contract to the extent specified in your Cases and Hourly Rates (Controlled Work) Annex and where Contract Work is in respect of the Discrimination and/or Education Categories of Law. Face-to-Face Advice will include the supply and performance of all activities and services that form part of an end to end face-to-face legal advice service, including the services set out in this Specification.
- 1.7 You will also provide legal advice in relation to Exempted Persons in the Discrimination and Education Categories of Law (provided you are authorised to undertake Contract Work in those Categories of Law) who are referred to you from the Operator Service or who contact you directly, and who you have assessed and confirmed to qualify as Exempted Persons.
- 1.8 Contract Work will cover all work undertaken for the Client following your acceptance of a Case from the Operator Service or direct contact from an Exempted Person. Contract Work includes carrying out the necessary means testing and application of the Legal Aid Legislation and undertaking and/or considering the matters referred to in Paragraphs 2.9 to 2.16 and after which, subject to eligibility, the giving of Remote Advice and/or Face-to-Face Advice where applicable.
- 1.9 You must have an appropriate procedure in place to assess whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of the Remote Advice can reasonably be expected to enable:
- (a) you to understand and act on the Client's instructions; and
  - (b) the Client to understand and act on your advice.
- 1.10 If following an assessment you consider that the provision of the Remote Advice referred to in Paragraph 1.9 cannot reasonably be expected to satisfy the requirements set out in Paragraphs 1.9(a) and 1.9(b), then:
- (a) in respect of Cases in the Family and Housing Categories of Law you must transfer the Client to a face-to-face provider in accordance with the referrals and signposting process detailed in Paragraph 4.32;



- (b) in respect of Cases in the Debt Category of Law you must transfer the Client to a face-to-face provider in accordance with the referrals and signposting process detailed in Paragraph 4.32 ensuring that the Client is given the "CLA Reference Number" allocated to the Case;
  - (c) in respect of Cases in the Discrimination and Education Categories of Law only, you must provide the Client with Face-to-Face Advice under the Contract to the extent specified in your Cases and Hourly Rates (Controlled Work) Annex (subject to instances where a Discrimination Case forms part of a wider matter and is referred out to an alternative Face-to-Face Provider).
- 1.11 In respect of Family and Housing, (described in the flow chart as non-mandatory Categories), if you determine that Remote Advice is appropriate but a Client requests Face-to-Face Advice then the Case must be transferred to a Provider who will provide Face-to-Face Advice in accordance with Paragraph 4.32.
- 1.12 In respect of the Debt Category (described in the flow chart as a mandatory Category save for the exception in respect of Legal Representation), if you determine that a Case is suitable for Remote Advice, you will not provide, and the Client will not have the option under the Contract to receive, or be referred for Face-to-Face Advice on such matter unless the Client is an Exempted Person, in such case the Client must be referred to Face-to-Face Advice.
- 1.13 In respect of the Discrimination and/or Education Categories of Law:
- (a) in respect of Controlled Work – if you determine that Remote Advice is suitable, you will not provide and the Client will not have the option under the Contract to receive Face-to-Face Advice on such matter (unless the Client is an Exempted Person and in which case Face-to-Face Advice must be provided if requested); and
  - (b) in respect of Licensed Work - if you determine that Remote Advice is suitable, you will not provide Face-to-Face Advice or transfer such Client for the provision of Face-to-Face Advice on such matter unless specifically requested by a Client.

## **LEGAL AID LEGISLATION**

- 1.14 This Contract is one of a number of types of contracts, which we procure to deliver publicly funded civil work to eligible Clients. When providing any Contract Work you must comply with the Legal Aid Legislation which details the services we may fund, scope of funding, and the way different services are funded.

## **CONTROLLED WORK – FAMILY, HOUSING, DEBT, EDUCATION AND DISCRIMINATION CATEGORIES OF LAW: FORM OF CIVIL LEGAL AID**

- 1.15 Controlled Work is sub-divided into various Forms of Civil Legal Aid. In respect of Controlled Work, this Contract permits you to undertake the following in relation to the Family, Housing, Debt, Education and Discrimination Categories of Law (provided that you are entitled to undertake Contract Work in the relevant Category of Law pursuant to this Contract):

<b>Form of Civil Legal Aid</b>	<b>Debt Housing &amp; Family</b>	<b>Discrimination</b>	<b>Education</b>
<b>Legal Help</b>	Yes	Yes	Yes
<b>Help with Family Mediation</b>	No	Yes	No
<b>Help at Court</b>	No	No	Yes
<b>Family Help (Lower)</b>	No	Yes	No

### **LICENSED WORK - DISCRIMINATION AND EDUCATION CATEGORIES OF LAW**

- 1.16 If you are permitted to provide Contract Work in Discrimination and Education Categories of Law, you may also provide Licensed Work in these Categories of Law under your Contract, and Sections 7 and 8 to this Specification apply to you. You are only permitted to provide Licensed Work in respect of Legal Representation, as identified on the flow chart above and in accordance with Sections 7 and 8 below.

### **STRUCTURE OF THE SPECIFICATION**

- 1.17 Sections 1 to 4 of this Specification are of general application to all Categories of Law. Sections 5 and 6 apply only to Contract Work which is Controlled Work. Sections 7 and 8 apply only to Contract Work which is Licensed Work. Sections 9 to 12 apply to specific Categories of Law ("Category Specific"). Where there is any conflict between the general provisions, the Controlled Work provisions, the Licensed Work provisions and the Category Specific Rules, the Category Specific Rules shall have precedence over the other provisions.

### **CATEGORY DEFINITIONS**

- 1.18 You acknowledge and agree that the Category Definitions 2013 (as amended from time to time), which apply to the 2013 Standard Civil Contract and which are used in Sections 9 to 12 of this Specification shall be incorporated into this Contract and shall be deemed to be amended as necessary to give effect to the intended meaning of the 2013 Standard Civil Contract in the context of this Contract rather than the 2013 Standard Civil Contract.

## **SECTION 2: DELIVERING THE SERVICE**

### **2. CASE ALLOCATION AND HOURS OF SERVICE**

- 2.1 You must ensure that at all times during:
- (a) the Core Hours and Rota Hours, your Advisers are available to receive new Cases from the Operator Service; and
  - (b) the Business Hours, your Advisers are available to deal with Clients and Exempted Persons or potential Exempted Persons (as applicable) who contact you through the Backdoor Telephone Number.

#### **Case Transfer**

- 2.2 During the Core Hours the Operator Service will transfer new Cases to you in proportion with the size of your Contract. During Rota Hours the Operator Service will transfer new Cases equally to the CLA Providers operating during the Rota Hours.

#### **Rota Hours - Evenings and Weekends**

- 2.3 We will issue you with a rota or rotas which will set out your rota hours in each Category of Law to cover any time between 5:00pm to 8:00pm from Monday to Friday (excluding bank and/or public holidays) and Saturday mornings, from 9.00am to 12.30pm (your "**Rota Hours**").
- 2.4 We will issue you with your Rota Hours for each Contract Year by no later than:
- (a) 4 weeks prior to the Service Commencement Date (in the case of the first Contract Year); and
  - (b) 2 weeks prior to the anniversary of the Service Commencement Date (in the case of each subsequent Contract Year).
- 2.5 In our absolute discretion, we may amend your Rota Hours from time to time. We will act reasonably and in good faith when we are issuing you with and/or amending your Rota Hours, having regard to your Maximum Cases in respect of the relevant Category of Law in the relevant Contract Year.

#### **Advisers**

- 2.6 You must ensure you:
- (a) have sufficient Advisers available in each Category of Law set out in your Cases and Hourly Rates (Controlled Work) Annex to receive and action all new Cases in such Categories during the Core Hours and Rota Hours in accordance with the Contract;
  - (b) have sufficient Advisers available in each Category of Law set out in your Cases and Hourly Rates (Controlled Work) Annex to deal with Clients and Exempted Persons during the Business Hours in accordance with the Contract; and
  - (c) use all reasonable endeavours to resource the Core Hours and Rota Hours, and resulting Contract Work with the intention of providing the Core Hours

and Rota Hours in each Category of Law evenly throughout the Contract Year.

You will notify us promptly upon becoming aware that compliance with your obligations in this Paragraph 2.6 is likely to result in you undertaking your Maximum Cases in any Category of Law prior to the end of the relevant Contract Year.

## **RESPONSE TIMES**

- 2.7 The KPI Annex sets out details of the response times applying to various aspects of the provision of Contract Work.

## **RECEIVING NEW CASES – FRONT DOOR CALLS AND ONLINE PORTAL**

### **Initial Steps**

- 2.8 Upon receiving a new Case from the Operator Service, by telephone, via the Online Portal or via direct contact from a potential Exempted Person, you will undertake the initial steps detailed in Paragraphs 2.9 to 2.16. If, following completion of the initial steps, a new Case is not accepted by you for the provision of Contract Work under the Contract, you will only be remunerated for the time spent completing these initial steps up to a maximum of 18 minutes (with the exception of circumstances relating to potentially Exempted Persons as detailed in Paragraph 2.14 below, in which you will not be entitled to any remuneration for completing the initial steps).
- 2.9 Your Advisers must as a minimum deliver the following information to the potential Client upon speaking or otherwise communicating with the potential Client for the first time:
- (a) the name of their organisation;
  - (b) the Category of Law they offer advice in;
  - (c) that such advice is given as part of the Civil Legal Advice Service; and
  - (d) the Adviser's name.
- 2.10 Your Advisers will make the following determinations in accordance with the applicable requirements of the Merits Regulations, the Procedure Regulations and the Financial Regulations:
- (a) assess and confirm if the new Case is within the scope of the Contract Work;
  - (b) assess and confirm the merits of the new Case;
  - (c) confirm the means assessment of the individual provided by the Operator Service.
- 2.11 If your Advisers determine that a new Case does not satisfy all of the criteria detailed in Paragraph 2.10, the individual must be signposted to alternative sources of help. If your Advisers determine that the criteria detailed in Paragraph 2.10 are satisfied, they must undertake the following further steps:

- (a) inform the Client of the requirements regarding the provision of evidence required under the Procedure Regulations and the Financial Regulations, as applicable, and the process for supplying such evidence, as well as the implications of the Client making any misrepresentation with regard to eligibility, including the fact that the Client would be required to repay to us any costs we pay out to you in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work. Where an individual does not provide evidence required by this Paragraph 2.11(a) you may only claim payment in accordance with paragraph 4.2 of the Cases and Hourly Rates (Controlled Work) Annex;
  - (b) assess in accordance with Paragraphs 1.9(a) and 1.9(b) above whether the new Case is suitable for delivery of Remote Advice, and if not take appropriate action in accordance with Paragraphs 1.10 to 1.13. If Remote Advice is not considered suitable then full reasons for this decision must be recorded on the Case file and Case Handling System; and
  - (c) assess whether any Service Adaptations or Reasonable Adjustments are required, and if so, record such requirements on the Case file and Case Handling System.
- 2.12 Where a third party is calling on behalf of a Client your Advisers must assess and satisfy themselves that the third party is authorised to act for the Client and record on the Case file and the Case Handling System the steps taken and evidence provided in this regard.
- 2.13 Where any potential conflict or concerns are identified in relation to a third party you must act in accordance with Legal Aid Legislation and relevant guidance (including the Lord Chancellor's Guidance), and if necessary either refuse an application or, where an application has been accepted, decline to carry out or continue to carry out work. For the avoidance of doubt, the provisions of Paragraphs 2.9 to 2.16 apply when undertaking the initial steps and throughout your involvement on a Case.
- 2.14 Your Advisers must assess whether an individual that contacts you directly qualifies as an Exempted Person, and you will not be remunerated for any time on a Case unless an individual who qualifies as an Exempted Person has been confirmed as such and you are authorised by this Contract to accept such Contract Work.
- 2.15 Your Advisers must check if there is any conflict of interest between Clients, or whether you are required to make a referral under the professional conduct rules of your Relevant Professional Body.
- 2.16 Upon receiving a new Case and following initial contact with the Client your Advisers must update the CHS with the appropriate outcome code within 1 Business Day, confirming whether or not the Case has been accepted for the provision of Contract Work by you, rejected or transferred or is pending further assessment in accordance with Paragraph 2.10.
- 2.17 Your Advisers, must use separate DDI(s) for receiving Frontdoor Calls from the DDI(s) you use to receive Backdoor Calls.
- 2.18 On receiving a Frontdoor Call from the Operator Service and when returning an answer phone message you must confirm the Client's name and date of birth (or

other appropriate details such as postcode or first line of address) and then use this information to bring up the appropriate record on the Case Handling System.

## **BACKDOOR CALLS AND/OR COMMUNICATIONS FROM EXISTING CLIENTS**

- 2.19 You must ensure that your Backdoor Telephone Number is operational at all times.
- 2.20 We will assign you a Backdoor Telephone Number against each Category of Law that you are authorised to undertake in the Cases and Hourly Rates (Controlled Work) Annex. You will provide Clients with your Backdoor Telephone Number in order that they may contact your Advisers directly without going through the Operator Service. You must provide the Backdoor Telephone Number to the Client during the initial call or when responding to a new Case transferred via the Online Portal, and also in the initial letter sent to the Client. You may also (if you choose to) send the number via SMS text or email.
- 2.21 Your Backdoor Telephone Number must connect to DDI(s), which are separate DDI(s) from the DDI(s) you use to receive Frontdoor Calls.
- 2.22 Where the relevant member of your personnel takes the Backdoor Call directly, or a Backdoor Call message is retrieved from the answer phone service, or from the Online Portal then you must ensure that an appropriate Adviser responds to the Client as required depending on the circumstances, but in any event within the timescale set out in the KPI Annex.
- 2.23 If you are unable to contact the Client during such period, you must try to contact the Client as a minimum on 2 occasions within 1 Business Day of the time the message was left.

## **EXEMPTED PERSONS**

- 2.24 If your Cases and Hourly Rates (Controlled Work) Annex permits you to provide Contract Work in the Education and/or Discrimination Category, your Backdoor Telephone Number may be publicised for the sole purpose of enabling Exempted Persons to contact you direct on your Backdoor Telephone Number, as follows:
  - (a) we may promote your Backdoor Telephone Number at our sole discretion; or
  - (b) we may require, at our sole discretion, that you promote your Backdoor Telephone Number, at your cost and as directed by us; or
  - (c) you may promote, at your cost, your Backdoor Telephone Number, provided that you notify us prior to any such promotion.

## **TEXT PHONE AND TEXT RELAY**

- 2.25 You are required to operate (at your cost) a text phone or other similar service for individuals who are deaf or hard of hearing or who cannot speak on the phone, for example, Text Relay. Text Relay connects such people with other people using a telephone, by providing a text-to-voice and voice-to-text relay service. Text Relay provides an automatic connection to Text Relay, when someone using a textphone communicates with someone using a standard telephone. This service also supports textphone to textphone calls.

- 2.26 Once an individual has been in contact with an Adviser, they can continue to be advised directly by text phone, through Text Relay, by written correspondence or fax.

## **INTERPRETER SERVICE**

- 2.27 Your Advisers must be trained to identify and respond to an individual's need for an interpreter and/or sign language when this will assist individual, and must offer individuals access to an interpreter through the approved Interpreter Service and/or British Sign Language (as applicable).
- 2.28 You must provide conference call facilities to allow for three way calls for example where an interpreter or British Sign Language is required via telephone and/or web-cam. Before any call your Adviser must brief the interpreter and/or British Sign Language as to the matter.

## **CORRESPONDENCE AND BRANDING**

### **General Requirements**

- 2.29 All correspondence must be in a format that the Client confirms is accessible to the Client, eg use of Easy Read, correspondence may be in larger font size, translated, electronic form, audio or Braille etc.
- 2.30 From the Service Commencement Date, you must be able to provide Remote Advice via Web-cam, telephone, email, post and upon prior notification, through the Online Portal.

### **Written Correspondence to Clients**

- 2.31 All correspondence must comply with branding guidance issued by us from time to time and must include the following at the bottom of each page:
- "Advice given by [specify name of organisation] as part of Civil Legal Advice, a national adviceline for England & Wales, paid for by Legal Aid."
- 2.32 Correspondence addresses must contain the name "Civil Legal Advice", e.g. Mr John Smith, Civil Legal Advice, London Specialist Telephone Advice Centre, London, WI.
- 2.33 You must also include any other information the Client is required to know about your organisation e.g. regulated by the Solicitors Regulation Authority, complaints procedure and review process, registered charity number etc.

### **Standard CLA Client Care Letters**

- 2.34 You must send your standard Client engagement letter, evidence of means and/or scope request(s) and Legal Help form within 1 Business Day of the Client's initial contact with an Adviser.

### **Written Correspondence from Clients**

- 2.35 You must provide individuals with the use of a free-post service for the posting of the evidence of means request, Legal Help form and any other documents required in relation to the conduct of a Case.

## Telephone Correspondence

- 2.36 You must offer to make outgoing calls:
- (a) if requested by a Client, or to a Client who has previously requested that you make outgoing calls to them;
  - (b) where a Client expresses concern about the cost of making a call; or
  - (c) where a Client is calling from a mobile phone.
- 2.37 When making outgoing calls you must block your number.
- 2.38 When making outgoing calls you must only provide information relating to the Case once you have confirmed that you are speaking to the Client or an authorised third party assessed in accordance in Paragraph 2.12.
- 2.39 You must agree with the Client the process for returning Client calls, and determine and document on the Client's file, whether:
- (a) you can reveal who you are to anyone who might answer your call; and
  - (b) you can leave a message on the Client's answer phone.

## E-mail Correspondence

- 2.40 Advisers' email addresses must be standardised so that Clients and other organisations realise that the person is sending the e-mail as part of the Civil Legal Advice Service even though they work for a different organisation.
- 2.41 You should set up a sub-domain for Advisers' e-mail addresses. This sub-domain will be called Civil Legal Advice and will mean that Advisers e-mail addresses are: [name@cla.\[usual provider domain name\]](mailto:name@cla.[usual provider domain name])
- 2.42 The following must be included at the bottom of every email:
- "Advice given by [*Name of organisation*] as part of Civil Legal Advice, a national adviceline for England & Wales, paid for by Legal Aid".
- 2.43 Not Used

## TRAINING OF ADVISERS

- 2.44 You must ensure that all Advisers receive training on the following matters before undertaking any Contract Work, and that they continue to receive regular ongoing training on the same matters throughout the course of the Contract:
- (a) how to identify when it is appropriate for a Client to be signposted or referred to a Face-to-Face Provider;
  - (b) Remote Advice skills (e.g. building rapport and empathy with Clients when communicating remotely, listening and responding, beginning and ending communication and structuring an interview);
  - (c) the signposting and referral processes;



- (d) how to deal with difficult calls, including distressed callers, silent calls and abusive callers;
- (e) the application of the Vulnerable Persons Policy;
- (f) Client care policies, including your policy on complaints, client confidentiality, data protection and conflict of interest, the application of the Vulnerable Persons Policy, (including with regard to child and vulnerable adult protection) as well as domestic abuse awareness;
- (g) your Equality and Diversity Policy and the Equality and Diversity Guidance;
- (h) how to carry out Reviews in accordance with your procedure for Reviews required pursuant to Paragraph 2.53;
- (i) understanding the needs of your Clients, particularly those with Relevant Protected Characteristics, when using your Remote Advice service and how you can seek to support them via the available Service Adaptations and Reasonable Adjustments that your service provides.

### **Online Advice**

- 2.45 We will notify you in advance of the date from which you will start to receive Cases where the Client requires online (as opposed to telephone) communication. This Client requirement will be recorded on the "Cases to action screen" within the CHS.
- 2.46 Where a Client has elected to receive online advice, you may advise that Client by logging into the Online Portal and recording your advice in writing on that website.
- 2.47 Further communications with the Client online may be triggered by the Client updating the Online Portal. You will be notified should a Client receiving online advice update the Online Portal.
- 2.48 For the avoidance of doubt, save where the context requires otherwise, all provisions of the Contract including those which relate to communications by telephone, also apply to communications made through the Online Portal.

### **Alternative means of communications**

- 2.49 To the extent not already required by this Contract, you must where we require you to, be able to communicate with Clients via online means of communication, for example, SMS messaging services.
- 2.50 Where we require you to advise Clients using alternative communication methods under Paragraph 2.49 we may remove this requirement at any point on reasonable notice to you following our evaluation of the method of delivery.

### **GENERAL**

#### **Maintaining up to date contact information**

- 2.51 You must ensure at all times that you have and keep at all times, and provide to us upon request, an up to date list of the following contact information:

- (a) name of all Advisers;
- (b) Category(s) of Law each Adviser can advise on;
- (c) telephone Number of the DDI(s) used to receive Frontdoor Calls; and
- (d) your Backdoor Telephone Number for each Category of Law.

#### **ALTERNATIVE MEANS OF COMMUNICATION AND METHODS OF DELIVERY**

- 2.52 You must, acting in good faith, work with us to explore alternative and innovative means of communication with Clients and the delivery of Contract Work.

#### **REVIEWS**

- 2.53 You must have a written procedure for dealing with Reviews.

#### **CALLS TO THE BACKDOOR NUMBER**

- 2.54 Where a Client or prospective Client contacts you via a Backdoor Number in respect of a new matter you must put them through to the Operator Service, unless the Client or potential Client is an Exempted Person.

## **SECTION 3      GENERAL PROVISIONS**

### **3.      General powers – Controlled Work**

- 3.1      For Controlled Work, the decisions to provide services are taken by you on behalf of the Director. You must report all Controlled Work Case outcomes promptly, fairly and accurately in accordance with the CLA Operations Manual.

#### **Procurement Areas**

- 3.2      Where you are permitted to undertake Contract Work in Discrimination and/or Education Categories of Law pursuant to this Contract, without limiting the other requirements under this Contract, you will be required to provide Face-to-Face Advice in those Categories of Law (including through Agents, where applicable, as provided by Paragraphs 4.3 to 4.6) in each of the following Procurement Areas:

- London
- North East
- Midlands and East of England
- South East
- North West
- South West
- Wales

- (a)      from either an Office or alternative, 'local' arrangement (as required by Paragraphs 4.28 to 4.31, as applicable);
- (b)      in exceptional circumstances, by travelling to see the Client; and/or
- (c)      in the Discrimination Category only, by making a Referral to another Face-to-Face Advice Provider with a contract in an appropriate Category of Law.
- 3.3      Where Face-to-Face Advice is required in the Discrimination and/or Education Categories of Law in accordance with this Contract, Clients must be offered a face-to-face appointment in their own Procurement Area, or another Procurement Area if more convenient to the Client.

#### **Provision of Information**

- 3.4      If you have provided Contract Work to a Client and that Client chooses to instruct another CLA Provider or Provider with regard to the same matter or issue, you are required, on request from the new CLA Provider or Provider and only with the consent of the Client, to give to the new CLA Provider or Provider the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

#### **Misrepresentation**

- 3.5      If you know or suspect that a Client:
- (a)      has failed without good reason to provide information or documents relevant to either your decision to carry out Controlled Work or the

Director's determination that the Client qualifies for civil legal aid provided as Licensed Work; or

- (b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false,

then you must immediately cease work and report the relevant circumstances to your Contract Manager.

- 3.6 The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

### **Payment other than through the Contract**

- 3.7 Except as otherwise provided by us you must not charge a fee to the Client or any person for the services provided under this Contract or seek reimbursement from the Client or any other person for any disbursements incurred as part of the provision of such services.
- 3.8 Where you have been carrying out Contract Work on behalf of a Client, you must not accept instructions to act privately in the same matter from a Client unless you have advised the Client in writing of:
  - (a) the consequences of ceasing to be in receipt of Legal Aid; and
  - (b) any further Legal Aid services which may be available, whether from you or another CLA Provider or Provider.
- 3.9 You must not ask your Client to instruct you on a private basis simply because your costs exceed the amount we will pay you under this Contract for the relevant Case.
- 3.10 Where a Client elects to instruct you privately in relation to a matter in which you have been providing Contract Work, a copy of the letter dealing with the matters required by Paragraphs 3.8 and 3.9 must be kept on the file.
- 3.11 Subject to Paragraph 3.14, you cannot be retained to act for the Client in the same matter under this Contract and on a privately paying basis at the same time.
- 3.12 You may charge privately for civil legal services which are not described in Part 1 of Schedule 1 to the Act (including for making an application for a determination under section 10 of the Act). If the case later becomes an Exceptional Case you may not charge privately for any work which becomes payable under Legal Aid pursuant to a determination under section 10 of the Act. For the avoidance of doubt, where you have already received payment from the Client for work which has become payable under Legal Aid pursuant to a determination under section 10 of the Act, you must refund such payment to the Client.

- 3.13 Subject to Paragraph 3.14, all payments for Contract Work must come through us, except:
- (a) where the statutory charge in your favour arises; or
  - (b) where you are responsible for collecting a contribution that is payable.
- 3.14 This Paragraph represents our authority pursuant to section 28(2)(b) of the Act, for you to receive payment from another party under a Client's costs order or Client's costs agreement (as defined in Legal Aid Legislation) and to recover those costs at rates in excess of those provided for in this Contract or any other contract with us. This applies in respect of both Licensed Work and Controlled Work and applies also to costs recovered in respect of Counsel's fees. It also applies notwithstanding any Costs Limit on a Certificate in Licensed Work cases.
- 3.15 Paragraph 3.14 does not entitle you to take any form of enforcement action. This must be specifically authorised under Legal Aid Legislation.
- 3.16 Where an order or agreement for a sum of money is payable to the Client, in which the proportion of the sum that represents the damages and the costs are not specified, we do not authorise you to retain any part of the sum, and you must claim the costs of any relevant work from us under the provisions of this Contract.

### **Transitional Provisions**

- 3.17 In relation to fees and remuneration rates, the terms of this Specification apply to all Cases commenced by you on or after the Service Commencement Date. For the purposes of this rule you "commence" a Case when you accept a Case on the Case Handling System after referral of the relevant Case from the Operator Service or open a Case for an Exempted Person in each case following completion of the initial steps detailed in Paragraphs 2.9 to 2.16.
- 3.18 Subject to Paragraph 3.17 and any Category Specific Rules the provisions of this Specification (including any procedures for assessing remuneration) will apply to all work on Cases undertaken on or after the Service Commencement Date.

## **SECTION 4 SERVICE STANDARDS**

### **4. General**

- 4.1 This part of the Specification sets out Service Standards which must be met when carrying out Contract Work, in addition to those set out in Category Specific Rules. Compliance with these Service Standards may also be taken into account in future invitations to tender for contracts for Legal Aid.
- 4.2 Service Standards must be complied with by you as a whole organisation and by each of your Offices, unless we agree otherwise.

### **Use of Agents, Counsel and Approved Third Parties**

- 4.3 You may instruct Agents, Counsel or Approved Third Parties from time to time to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with the rules on working with third parties in Clause 3 of the Standard Terms. Provided always that you retain ownership and responsibility for all Cases worked on by Counsel, Approved Third Parties and/or Agents, and specifically in relation to Approved Third Parties and Agents:
- (a) you may only instruct an Approved Third Party or Agent if the Case relates to Education or Discrimination Categories of Law and for the delivery of Face-to-Face Advice; and
  - (b) the Approved Third Party or Agent satisfies all the conditions set out in Paragraph 4.4.
- 4.4 The conditions referred to in Paragraph 4.3 are that:
- (a) the Approved Third Party or Agent's work is subject to your supervision;
  - (b) the Approved Third Party or Agent's work is covered by your insurance;
  - (c) work entrusted to an Approved Third Party or Agent is undertaken in accordance with the terms of the Contract;
  - (d) you retain responsibility for each Case undertaken by the Approved Third Party or Agent; and
  - (e) Cases undertaken by the Approved Third Party or Agent are not referred to a separate organisation.
- 4.5 Where you instruct an Approved Third Party or Agent you must claim payment for the work as if you had carried it out directly.
- 4.6 Unless we have specified otherwise, you may not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this part of the Specification.

### **Supervisor standards**

- 4.7 You must (unless Category Specific Rules specify otherwise):

- (a) have at least one full time equivalent Supervisor in each Category. For the purpose of this Paragraph 4.7 "full time equivalent" means the equivalent of one individual working 5 days a week and 7 hours on each such day (excluding breaks); and
- (b) such person (or such persons) must be either one of your employees or a director of or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively) and must at all times during their working hours (except as required for the proper performance of their role such as attending court and/or Clients) work from the Office specified in your Contract for Signature.

Subject to Paragraphs 4.20 to 4.21, if you cease to meet the requirements of this Paragraph 4.7 your right to undertake work in the relevant Category will cease. Any breach of this Paragraph 4.7 shall be a Fundamental Breach.

4.8 To qualify as a Supervisor for the purposes of any Category of Law under this Contract a person must for the duration of this Contract:

- (a) comply with the Case Involvement Standard in that Category as set out at Paragraphs 4.11 to 4.13;
- (b) comply with the Supervision Standards set out at Paragraphs 4.14 to 4.19;
- (c) comply with the Legal Competence Standard for that Category as set out in the Category Specific sections of this Specification. The Legal Competence Standard will be measured as at the time a person makes the application as a Supervisor and at any point during the Contract when we request confirmation of compliance with the Supervision Standard. The Supervision Standard is also set out fully in the Supervisor self-declaration forms for each Category; and
- (d) be either one of your employees, or a director of, or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively).

4.9 If any Supervisor ceases to comply with the requirements of Paragraph 4.8, or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence, you will notify us and such member of your personnel must immediately cease acting as a Supervisor.

4.10 A Supervisor may delegate some functions to one of your employees who does not meet all the requirements in Paragraph 4.8(a) to (c) to act as their deputy supervisor. However, the Supervisor must continue to supervise the deputy supervisor who must have a training and development plan to provide the necessary skills and experience to become a Supervisor in future.

### **Case Involvement Standard**

4.11 All Supervisors must meet, in the relevant Category of Law, a minimum Case Involvement Standard of 350 hours in each of the last three years. There are minimum and maximum allowances by which Supervisors can meet the 350 hours and they are as follows:

- (a) direct (personal) casework (this may include direct (documented) supervision) – minimum of 235 hours (of which direct (documented) supervision cannot make up more than 120 hours);
  - (b) file review (including face-to-face) – maximum 60 hours (i.e. approximately 50% of 115 hours);
  - (c) external training delivery (CPD-accredited) – maximum 115 hours;
  - (d) documented research and the production of publications - maximum 115 hours; and/or
  - (e) other supervision - maximum 115 hours.
- 4.12 If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 1050 hours over the last five years. This requirement is subject to the same minimum and maximum allowances set out in Paragraph 4.11, adjusted pro-rata.
- 4.13 The Case Involvement Standard will be measured as at the time you appoint a person as a Supervisor and at any point during the Contract when we request confirmation of the Case Involvement Standard.

**Supervision standards**

- 4.14 All Contract Work must be supervised by a Supervisor in the relevant Category of Law.
- 4.15 All Supervisors must have experience of at least one case where they have demonstrated their ability to recognise the possibility of a contravention of convention rights under the Human Rights Act 1998 (as amended) and meet one of the following supervisory skills standards:
- (a) has supervised in the relevant Category of Law at least one full-time Caseworker (or equivalent) for at least one year in the previous five year period;
  - (b) completed such training covering key supervisory skills that we approve from time to time in the previous 12 months period;
  - (c) completed the Level 3 or higher National Vocational Qualification (NVQ) standard (or any replacement from time to time) in supervising in the previous five year period.

The Supervisor Standard in this Paragraph 2.28 will be measured as at the time a person becomes a Supervisor and at any point during the Contract Period when we request confirmation of the Supervisor Standard.

- 4.16 A Supervisor must ensure that all persons performing Contract Work have a professional legal qualification or, where a professional legal qualification is not required in respect of Contract Work, such persons must perform a minimum of 12 hours' work each week in the relevant Category of Law.
- 4.17 Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including but not limited to:



- (a) designating time to conduct supervision of each Caseworker;
  - (b) without limiting Paragraph 4.7, designating time to be in each Office where Contract Work is being conducted; and
  - (c) ensuring that the level of supervision provided reflects the skills, knowledge and experience of each Caseworker.
- 4.18 Each Supervisor must conduct file reviews for each Caseworker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).
- 4.19 Without limiting Paragraph 4.7, where a Caseworker undertakes Contract Work in a location other than where their Supervisor is based, the Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.

### **Temporary Supervisor absence**

- 4.20 If a Supervisor is for any reason temporarily unable to act you may for a period of up to 6 weeks either:
- (a) nominate a Caseworker who does not meet all the Supervisor requirements (as defined in Paragraph 4.15) to supervise; or
  - (b) nominate an external Supervisor to supervise.
- 4.21 If you estimate that your Supervisor may be unable to supervise for more than 6 weeks, or following completion of the 6-week temporary period described in Paragraph 4.20 above the Supervisor is not able to resume supervision, you must immediately inform your Contract Manager who will decide at their reasonable discretion what you must do to comply with the Contract. This may include:
- (a) extending the use of an employed Caseworker as Supervisor for a limited period;
  - (b) formalising the external supervision arrangement for a limited period;
  - (c) by written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
  - (d) applying a Sanction.

### **Minimum Supervisor ratios**

- 4.22 A Supervisor must not supervise more than four Caseworkers. In each Category specified in your Cases and Hourly Rates (Controlled Work) Annex you must, without limiting Paragraph 4.7, maintain a ratio of having at least one full time equivalent Supervisor for every four full time equivalent Caseworkers at each Office from which you are carrying out work in that Category. Such Supervisors must actively supervise such Caseworkers. For the purpose of this Paragraph 4.22 "full time equivalent" has the meaning as in Paragraph 4.7(a).
- 4.23 Not used.

- 4.24 For the purpose of Paragraph 4.22 and subject to Category Specific Rules, a 'Caseworker' means a person other than a Supervisor who:
- (a) is either an employee or is an Approved Third Party or Agent who complies with all the conditions set out at Paragraph 4.4;
  - (b) regularly undertakes civil legal advice work in the relevant Category (unless the Caseworker holds a professional legal qualification he or she must undertake a minimum of 12 hours advice work each week in the relevant Category); and
  - (c) is a fee-earner to whom a specific caseload of Contract Work in the relevant Category is allocated and who is responsible for the progression of those cases (under supervision).
- 4.25 Individuals who only undertake administrative tasks (which you may not claim for under this Contract) or only conduct triage (early diagnosis of an individual's overall legal problems prior to a matter being opened), are not Caseworkers for the purpose of this definition.

### **Exclusive Categories of Work**

- 4.26 All Categories of Work are exclusive under this Contract. Your Cases and Hourly Rates (Controlled Work) Annex must permit you to undertake work in that Category.

### **Overlapping Categories**

- 4.27 Certain Cases may fall within more than one Category, in which case you can choose which Category to carry the Case out in, in accordance with the Category Definitions 2013.

### **Presence in Procurement Area**

#### Offices

- 4.28 For the purposes of carrying out Remote Advice, an Office must be a building which is suitable to cater for the needs of your personnel, enabling you to satisfy all relevant Health and Safety and equality legislation, the Quality Standards and Service Standards of this Contract and to protect Client confidentiality. An Office must be a secure location suitable for the storage of Client files, have the appropriate equipment to deliver services and be suitable to undertake work to progress a Client's Case. Hotels and vehicles cannot count as Offices for these purposes.
- 4.29 For the purposes of carrying out Face-to-Face Advice, an Office must be a building which is suitable to cater for the needs of your Clients, personnel, Authorised Third Parties and Agents, enabling you to satisfy all relevant Health and Safety and equality legislation, the Quality Standards and Service Standards of this Contract and to protect Client confidentiality. An Office must be open and accessible to Clients at the arranged meeting time, and it must be clear to the Client at all times which organisation is providing the Face-to-Face Advice. An Office must have waiting facilities and at least one confidential interview room which allow Client privacy to be protected. An Office must be a secure location

suitable for the storage of Client files, have the appropriate equipment to deliver services and be suitable to undertake work to progress a Client's Case. Hotels and vehicles cannot count as Offices for these purposes.

#### Local arrangements

- 4.30 Where the provision of Face-to-Face Advice is permitted under your Contract in respect of the Discrimination and/or Education Categories of Law, you do not need to maintain an Office in the Procurement Area and you may deliver Face-to-Face Advice through an alternative arrangement, which includes the following premises, provide they satisfy the requirements detailed in Paragraph 4.29:
- (a) another Provider's Office;
  - (b) the offices of any other supplier of legal services;
  - (c) offices of a third-sector organisation;
  - (d) Primary Care premises (for example a General Practitioner's surgery);
  - (e) commercially rented office space.
- 4.31 To support these local arrangements, Clients must be able to contact you by telephone and speak to a person in your organisation during Core Hours to arrange appointments and, where appropriate, receive advice in emergency cases. This telephone number may be for an Office outside the Procurement Area but must not be a mobile number, unless the Client's appointment is outside the Business Hours and in which case the mobile number of the individual who is to carry-out the Face-to-Face Advice may be provided. Out of Business Hours, Clients who telephone must be able to access information about opening hours and who to contact in an emergency.

#### **Referral and Signposting Arrangements**

- 4.32 You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:
- (a) you do not provide the services the Client requires;
  - (b) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services;
  - (c) you are required to make a referral under the professional conduct rules of your Relevant Professional Body; or
  - (d) you have made an assessment that Remote Advice is not appropriate for the Client, or the Client is an Exempted Person and has requested face-to-face advice or the Client has requested face-to-face advice in a category which is not covered by this Contract.
- 4.33 Where there is any conflict of interest between Clients or potential Client, or where you are required to make a referral under the professional conduct rules of your Relevant Professional Body we would expect that such a referral should be made to one of the other CLA Providers before signposting or referring externally. You must always make a Referral (as opposed to Signposting) where:

- (a) the Case relates to a mandatory Category of Law (as identified on the flow chart above in Paragraph 1.2) and you have assessed that the Client requires Face-to-Face Advice or where an Exempted Person would prefer not to receive Remote Advice;
  - (b) the Client requires Legal Representation and this is not authorised under your Contract or the Client would prefer to receive Face-to-Face Advice in Housing and Family Categories of Law. You must work on the principle that where representation is necessary Referral is made as early on as possible;
  - (c) you already have an established relationship with the Client and have undertaken work on a current Case or hold relevant Case information or documents and you can no longer help them under this Contract; or
  - (d) a Referral is needed as a Reasonable Adjustment to meet the needs of a Client or potential Client (as applicable) and you cannot meet such needs.
- 4.34 If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current Case or hold Case information or documents, you must inform the Client of the cost implications of referral (if any). Information about advice and assistance already given and any relevant documentation and details of any Reasonable Adjustments required by the Client must be forwarded to the new CLA Provider or new Provider (as applicable).
- 4.35 Where you make a referral to another CLA Provider or other Provider (as applicable) you must ensure, so far as practicable, that such provider is authorised by us to provide services in the Category of Law most relevant to the Client's problem.
- 4.36 Where you refer a Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another CLA Provider or Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.
- 4.37 When identifying a suitable provider for a Referral wherever possible you must use the LSC approved search facility detailed in the signposting and referral guidance issued by us from time to time. Where there is no suitable provider within the approved search facility you may use your own list of legal service providers that you have produced by area of law, or provide your own recommendation (as long as, in both cases, preference is given to, legal services providers that hold an SQM or LEXCEL and offer a free or low-cost service). Where there is more than one suitable provider any selection between them must be based first on the Client's choice and failing that, on the closest provider to the Client. Your preference for a particular provider should not be taken into consideration.
- 4.38 If a Case in the Housing, Family and/or Debt Categories of Law is required to be referred to a face-to-face provider, you may refer such Case to yourself provided that:

- (a) if the Contract Work is provided in respect of a Controlled Work Case, you hold a 2013 Standard Civil Contract which authorises you to perform such Case in the relevant Category of Law; or
  - (b) if the Contract Work is provided in respect of a Licensed Work Case, you hold a 2013 Standard Civil Contract which authorises you to carry out Licensed Work in the relevant Category of Law; and
  - (c) you have the Client's written consent to act; and
  - (d) you:
    - (i) have the closest Office to the Client from which Face-to-Face Advice will be delivered; or
    - (ii) your Office from which Face-to-Face Advice will be delivered is within 45 minutes travel time from the Client, and you have informed the Client of any other CLA Providers or Providers (as applicable) with a 2013 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office.
- 4.39 For the avoidance of doubt, if your Office from which Face-to-Face Advice will be delivered is more than 45 minutes travel time from a Client, and there are other CLA Providers or Provider (as applicable) with a 2013 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office, the Client must be referred to the closer adviser(s) in accordance with Paragraphs 4.33 to 4.37.
- 4.40 For the purposes of Paragraphs 4.38 and 4.39, the term "Office" is to be construed as defined in the 2013 Standard Civil Contract.

## **SECTION 5 CARRYING OUT CONTROLLED WORK**

### **5. Scope of Controlled Work**

- 5.1 You may undertake Controlled Work for Clients provided it falls within the scope of a Category of Law that you are authorised to undertake in your Cases and Hourly Rates (Controlled Work) Annex, subject to:
- (a) the Act and any secondary legislation made under it (including the Merits Regulations and the Financial Regulations);
  - (b) any limitations set out in your Cases and Hourly Rates (Controlled Work) Annex; and
  - (c) the provisions of this Contract.
- 5.2 Decisions relating to the making and withdrawal of determinations about Controlled Work are delegated to you by the Director in accordance with an Authorisation.
- 5.3 You should exercise the Delegated Functions in every appropriate case and these decisions should not be referred to the Director or anyone else to whom he has delegated his determination making function in accordance with an Authorisation although advice may be sought in cases of difficulty or doubt. These Delegated Functions must in all circumstances be exercised in accordance with the terms of this Contract.

### **Application procedures**

- 5.4 We may prescribe different forms for different Categories of Law or types of case or Client and for different Forms of Civil Legal Aid. We may amend the form or forms from time to time upon giving at least 28 days notice to you. Completed application forms must be kept on file.

#### *Application on behalf of a Child or Protected Party*

- 5.5 You may only accept an application from an "other person" as specified in regulations 22(5) and 22(6) of the Procedure Regulations if:
- (a) there is sufficient connection between the Child or Protected Party and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Protected Party; and
  - (b) the other person has sufficient knowledge of the Child or Protected Party, the problem and the Child's or Protected Party's financial circumstances to give proper instructions to you.
- 5.6 Where Controlled Work is carried out under the regulations specified in Paragraph 5.5, the application will be in the name of the Child/Protected Party but signed on his/her behalf. The form should be completed in the name of the Child/Protected Party but signed by the person who is applying on behalf of the Child/Protected Party with an annotation to that effect.

#### *Postal and fax applications*

- 5.7 Subject to Paragraphs 5.8 and 5.9, an application for Controlled Work may be accepted by post or fax.
- 5.8 Applications by post may not be accepted where the Client is resident outside the European Union and:
- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until they have returned to the European Union, or
  - (b) the services could be applied for on the same matter by a person resident in the European Union, or
  - (c) it is otherwise unreasonable to accept the application.
- 5.9 An application form may not be accepted by fax unless:
- (a) your Client is a child or vulnerable adult and Controlled Work is urgently required for your Client's safety; and
  - (b) you take reasonable steps to obtain the original of the signed application form.

### **Financial eligibility**

- 5.10 The thresholds for financial eligibility are those set out in the Financial Regulations.

#### *Means assessment process by you*

- 5.11 When you first receive a case from the Operator Service you must assess the prospective Client's means without the accompanying evidence.
- 5.12 You must send the Legal Help form with the request for evidence to the Client to sign and return at the earliest possible opportunity after the initial contact with the Client. This should be sent out to the client using a stamped addressed envelope or freepost address. The Adviser must inform the Client that if the signed application form for Legal Help and requested evidence is not returned the advice will be limited.
- 5.13 You may continue with a Case without the accompanying evidence where, exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the Case. Where you continue with a Case, you must ensure that the Supervisor records on the Case file the exceptional personal circumstances of the Client. For the avoidance of doubt, you may claim for Contract Work spent in connection with this Case (in accordance with the Payments, Disbursements and Reviewing your Claims for Payment (Controlled Work) Annex), however we may exercise our rights to Assess your Claim in accordance with this Contract.
- 5.14 If the signed Legal Help form and satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence does not show that the Client is financially eligible, you may claim a maximum of 132 minutes (which includes a maximum of 12 minutes to conclude any advice and if necessary to

refer or signpost the Client) for the Contract Work carried out as a Case provided that:

- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means;
- (b) you have acted reasonably in initially assessing financial eligibility on the information available;
- (c) the unsigned Legal Help form is on the Case file; and
- (d) you do not claim any Disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.

We may monitor the number of your Cases that fall into this category. If we consider it appropriate we may carry out further investigations. If, as a result of further investigation, it appears that you have breached this provision we may take appropriate action, including Assessing a sample of your Claims or applying a Sanction under Clause 24 of the Standard Terms.

#### *Computation period for assessing means*

- 5.15 The computation period is the calendar month up to and including the date on which the Client was first assessed by the Operator Service as being eligible (as noted on the Case Handling System). You must attempt to obtain evidence relating to that period.

#### *Assessing the means of a child*

- 5.16 When assessing the means of a Child or Protected Party, the appropriate means which you must take into account are:

- (a) those of the Child or Protected Party: and
- (b) in all cases other than applications for Legal Representation in non-family proceedings, those persons who are liable to maintain the Child or Protected Party or usually contribute substantially to his/her maintenance, subject to the exception provided for by the Financial Regulations.

- 5.17 When assessing means where you accept an application for Controlled Work directly from a Child you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and any conflict of interest), you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him/her.

- 5.18 Not used.

- 5.19 Not used.

#### **Case Start rules**



## *General rules*

- 5.20 Paragraphs 5.21 to 5.36 and relevant Category Specific Rules in Sections 9 to 12 of this Specification set out the rules for when a Legal Help Case may be commenced. No Claim may be made may be claimed for a Case which does not comply with these rules and if we discover a breach of these rules, on Audit or otherwise, any excess payments may be re-claimed.
- 5.21 The following rules are of general application:
- (a) a Case should be commenced only where all applicable criteria in the Merits Regulations and Financial Regulations are met in respect of opening the new Case. In particular, each separate Legal Help Case must satisfy the sufficient benefit criteria set out in regulation 32(b) of the Merits Regulations;
  - (b) a Case cannot be in more than one Category of Law;
  - (c) each separate Case must be the subject of a separate application form. You must identify, and record on the appropriate case file, any point at which the work that you are performing for any Client becomes two separate Cases and you open a separate Case; and
  - (d) each Case is unique to the CLA Provider that commences it. Where, pursuant to Paragraph 5.27, you provide Controlled Work to a Client on a matter on which Controlled Work has been undertaken by a previous CLA Provider or Provider, you must commence a new Case.

### *When can more than one Case be opened for a single Client?*

- 5.22 You must not open more than one Case for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will only satisfy this test if they are genuinely separate and distinct, typically because they arise out of different causes or events, and where either:
- (a) they necessarily fall under different Categories; or
  - (b) if they fall within the same Category, both
    - (i) if legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and
    - (ii) each problem requires substantial legal work which does not address the other problem(s).
- 5.23 For the purpose of Paragraph 5.22(b)(ii) 'substantial legal work' must consist of at least:
- (a) an additional 30 minutes of preparation or advice; or
  - (b) separate communication with other parties on legal issues.
- 5.24 Where the Client raises several issues at the first contact, a single Case should be commenced to identify the issues and provide general, preliminary advice. If

one legal issue is identified then the original, single Case should be used for the provision of further Controlled Work. However, more than one Case may be opened at the initial contact where this is justified under Paragraph 5.22.

- 5.25 Whether a further Case is justified depends on the nature of the Client's problems and does not depend on whether you purport to limit your retainer to only particular stages or aspects of the Client's problem.

*When can subsequent Case be opened?*

- 5.26 Once a Case has commenced, whether under this or any Previous Contract specification, a new Case can only be opened for the same Client if the Client has a new legal problem which is separate and distinct, as defined in Paragraph 5.22. Any work which does not relate to such a separate and distinct problem must be carried out under the original Case, whether or not circumstances have changed or developments have occurred as the case has progressed and whether or not the original Case was carried out by you or another Provider.

- 5.27 As an exception to Paragraph 5.26, you may commence a Case in relation to the same problem in respect of which your Client has already received Controlled Work services if:

- (a) a period of at least 6 months has elapsed since the Claim for that Controlled Work matter was submitted; or
- (b) (i) there has been a material development or change in the Client's instructions; and  
(ii) save where the Case was concluded under Paragraph 5.49(b), a period of at least 3 months has elapsed since the Claim for that Controlled Work Case was submitted.

- 5.28 For the purposes of Paragraph 5.27(b):

- (a) the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions;
- (b) a decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work Case cannot constitute a material development in the Case; and
- (c) a change in the law that is anticipated within the original Case cannot constitute a material development in the Case.

- 5.29 Where a Case has been closed and claimed for but further work is necessary and a separate Case is not justified:

- (a) the work already undertaken and the further work should be taken into account in determining whether the Case is an Escape Fee Case that escapes from the Hourly Rate provisions in the Payments, Disbursements and Claims Annex. If we agree to pay the matter as an Escape Fee Case, we will take into account any payments already made by way of the Hourly Rate;

- (b) you may claim further Disbursements as part of the Case where appropriate; and
- (c) where the Case has already been paid as an Escape Fee Case, the further work is payable on an Hourly Rate basis, subject to Assessment.

#### *Multiple Clients*

- 5.30 Where you act for more than one Client in relation to the same general legal problem a single Case should generally be used. Cases in respect of more than one Client may be commenced only where the following are satisfied:
- (a) if proceedings were issued each Client would need to be a party to those proceedings;
  - (b) each Client has a separate and distinct legal interest in the problem or issue; and
  - (c) in considering whether there is sufficient benefit for the second or any subsequent Client to receive Legal Help, you take into account the fact the Legal Help that is already being provided in relation to the same general problem.

#### *Previous Controlled Work carried out by a different Provider*

- 5.31 You are required to establish whether previous Controlled Work has been provided to the Client in respect of the same Case by making reasonable enquiries including (but not limited to):
- (a) asking the Client;
  - (b) examining any documentation provided by the Client; and
  - (c) considering the length of time that the issue or matter has been in existence and any steps in the issue or matter which have occurred.
- 5.32 If you fail to make reasonable enquiries in this situation any Claim for Controlled Work in relation to the Case may be disallowed where the Client has already received Controlled Work in relation to the same Case.
- 5.33 Where Controlled Work has been given for the same Case from another Provider within the six months preceding the application, you must obtain the consent of the Client to contact the previous CLA Provider or Provider (as applicable) on his/her behalf as soon as practicable in writing to:
- (a) confirm the reasons for the termination of retainer; and
  - (b) request a transfer or copy of the file.

Where the Client refuses to give you consent to contact the previous CLA Provider or Provider (as applicable), then you may not provide Controlled Work for that Client and may not make any Claim for payment in respect of any such work under this Contract.

- 5.34 When you have made a request for a Client's file under Paragraph 5.33, you may not start work for that Client until you have received the file and considered its contents unless it is absolutely necessary to take steps immediately to protect the Client's position or meet a court deadline. If you undertake Controlled Work in a situation of urgency and then, having received the file, conclude that the requirements of the Merits Regulations, Financial Regulations and the Procedure Regulations were not satisfied, you must cease acting for that Client immediately, but may still make a Claim for the work you have undertaken under Section 6 of this Specification.
- 5.35 When providing Controlled Work in the circumstances of Paragraphs 5.31 to 5.34 you must record the justification for doing so on the file. Changes to a third or subsequent Provider on the grounds of dissatisfaction with the service provided by or breakdown in relationship with a previous Provider will require greater justification. You must have regard to any Contract Work already carried out on the Case by the previous contracted Provider and ensure that the Contract Work you carry out does not involve unnecessary duplication.
- 5.36 Where Controlled Work is provided in contravention of Paragraphs 5.31 to 5.35, the work provided cannot be claimed as Contract Work except under Paragraph 5.34.

*Specific situations*

- 5.37 A Legal Help Case is not justified in the following circumstances:
- (a) providing information to Clients or to other persons contacting your organisation;
  - (b) supplying a new CLA Provider or Provider (as applicable) with a former Client's file or a copy, or information about the circumstances of termination of the retainer, under Paragraph 5.33.
- 5.38 Where Controlled Work has already been carried out for a Client then, subject to Category Specific Rules, a separate Case would not be justified in the following circumstances:
- (a) Controlled Work in relation to an interim remedy in a Case on which Controlled Work has already been provided;
  - (b) Controlled Work in relation to enforcement, a review or an appeal (including an application for a determination that the Client qualifies for Licensed Work) in a Case on which Controlled Work has already been provided;
  - (c) Controlled Work in relation to making a complaint in relation to a Case where Controlled Work is at any time provided in relation to a substantive legal remedy in the same Case;
  - (d) if a Client seeks advice as to whether he or she must change CLA Provider from a CLA Provider already providing Controlled Work. The provisions in Paragraphs 5.31 to 5.36 should be applied before any work is provided under a new Case;

- (e) providing Help at Court in a Case for which you have been providing Legal Help; or
- (f) any work undertaken on a Case by an Agent on your behalf will form part of the same Case as the parts of the Case handled by you.

5.39 Notwithstanding Paragraph 5.38(b), where the Client faces enforcement proceedings because he or she is alleged to have breached the terms of a suspended or postponed order, or is alleged to have breached the terms on which proceedings were adjourned, further Legal Help may be provided under a new Case.

### **Declining Controlled Work**

#### *Decline for good cause*

5.40 In addition to making a determination that an individual does not qualify for Controlled Work, you may for another good cause decline to receive an application.

5.41 Good cause for declining to receive an application under Paragraph 5.40 includes:

- (a) where you do not have the necessary skill or expertise to take on the Case or matter; or
- (b) other professional conduct reasons such as actual or potential conflict of interest.

5.42 You must give us such information about declining to receive an application under Paragraph 5.40 as we may require.

5.43 You must not decline to receive an application under Paragraph 5.40:

- (a) which is within the scope of your Contract and which you have the appropriate skills to carry out, on any grounds which directly or indirectly discriminate on the grounds of a protected characteristic (as defined in section 4 of the Equality Act 2010); or
- (b) because a potential Client's protected characteristic (as defined in section 4 of the Equality Act 2010) may result in additional costs or disbursements being incurred compared with a Client without them.

#### *Declining on the basis of likely cost*

5.44 "Good cause" in Paragraph 5.40 does not include any considerations regarding the level of any Hourly Rate you may be entitled to receive under this Contract. You may not decline to receive an application under Paragraph 5.40 on the grounds (however stated) that the Hourly Rate you would be entitled to claim for that work does not represent what you consider to be appropriate remuneration in the circumstances of the individual Case.

### **Use of Counsel**

- 5.45 Where you instruct Counsel under Legal Help in a Case, Counsel's fees count as a Disbursement and may not be taken into account in determining whether the Case is an Escape Fee Case.
- 5.46 Where you claim Counsel's fees under Paragraph 5.45:
- (a) you must record the justification for the instruction of Counsel in terms of the complexity or other exceptional circumstances of the Case and the relevant expertise of Counsel;
  - (b) Counsel must set out details of the time spent in his/her invoice; and
  - (c) you must pay Counsel the full fee stated by the Counsel's invoice and claimed from us, irrespective of any reduction in respect of Counsel's fees on assessment.
- 5.47 You may not instruct Counsel under Help at Court.

### **Clients with a financial interest in your costs**

- 5.48 If your Client has or is likely to have a financial interest in any Claim or assessment (because the statutory charge applies, they are obliged to make a contribution to their legal costs, or otherwise) they are entitled to be made aware of the costs you are incurring. You must on a regular basis:
- (a) notify your Client that they have a financial interest and explain why;
  - (b) explain that when you make your Claim for costs they have a right to make representations (see Paragraph 8.61); and
  - (c) provide them with an update of your costs, including information in relation to the fees of counsel, experts and other disbursements.

### **Ending Controlled Work**

- 5.49 You may make a Claim for a Controlled Work Case when any of the following events occurs:
- (a) the Client decides not to proceed, or indicates that they wish to take the Case forward themselves;
  - (b) the Client fails to give instructions for three months (unless the Case is on hold);
  - (c) a determination is made that the Client qualifies for civil legal aid provided as Licensed Work (unless further Controlled Work is required on Cases not covered by the determination) or the Case begins to be funded outside this Contract;
  - (d) you consider that the Case (having regard to any Category Specific Rules on commencing Cases) is completed;
  - (e) the determination that an individual qualifies for Controlled Work has been withdrawn under the Procedure Regulations;

- (f) you can no longer act through a conflict of interest or other reason of professional conduct.

**Exceptional Case**

- 5.50 You are authorised, under this Contract, to apply for an Exceptional Case in respect of Controlled Work in accordance with the procedures set out in the Procedure Regulations.

## **SECTION 6      PAYMENT FOR CONTROLLED WORK**

### **6.      General Regime**

#### *Levels of payment for Controlled Work*

- 6.1      We will pay you for Controlled Work carried out in accordance with this Contract and properly claimed on the basis set out in the Cases and Hourly Rates (Controlled Work) Annex subject to Cases being:
- (a)      properly conducted; and
  - (b)      claimed in accordance with the terms of this Contract.

By taking on the Client to undertake Controlled Work covered in your Cases and Hourly Rates (Controlled Work) Annex, you are accepting payment based upon the Hourly Rates and subject to the Maximum Cost per Case as full payment for all work reasonably required for the Client in that Case at the Controlled Work level (unless the Case subsequently becomes an Escape Fee Case).

- 6.2      Hourly Rates are inclusive of profit costs, travel and waiting time (subject to the Category Specific Rules at Sections 9 to 12 of this Specification, including travel time when providing Face-to-Face Advice in the Discrimination and Education Categories of Law), but are exclusive of other disbursements (including Travel Disbursements (as defined in your Payment, Disbursements and reviewing your Claims for Payment (Controlled Work) Annex) and VAT.

#### **Escape Fee Cases**

- 6.3      Subject to the relevant Claim being in respect of a Case within the Education and Discrimination Categories and subject to the Education and Discrimination Category Specific Rules, where the amount of any Claim as calculated on the basis of Hourly Rates exceeds the Escape Fee Case Threshold, ie where the costs incurred on a Case is more than three times the Maximum Cost per Case for the relevant Category specified in the Cases and Hourly Rates (Controlled Work) Annex then you can apply to us for the Claim to be treated as an Escape Fee Case, on a form specified by us.
- 6.4      Escape Fee Cases will be remunerated on the basis of Hourly Rates.
- 6.5      We will not normally refuse to treat a Claim as an Escape Fee Case on the grounds that the Case should have been split into more than one Case. However, where it appears that a Claim covers clearly unrelated matters with the intention of avoiding the Maximum Cost per Case set out in the Cases and Hourly Rates (Controlled Work) Annex, we may ask you to resubmit your Claim accordingly (in which case we will not refuse to pay for more than one Case by virtue of the fact that there is only a single Controlled Work application form). Any decision to request resubmission of Claims under this Paragraph will be subject to the appeals procedure set out in Paragraphs 8.69 to 8.79.
- 6.6      We may assess the costs of each Escape Fee Case Claim or a sample of them and where the amount assessed as payable for the Claim is:
- (a)      nil, we will not make payment for the Claim; or



- (b) otherwise below the Escape Fee Case Threshold referred to in Paragraph 6.3, we will pay costs in accordance with Paragraph 3 of the Cases and Hourly Rates (Controlled Work) Annex;
  - (c) otherwise, we will pay the amount assessed as payable for the Claim.
- 6.7 Where we refuse an application to agree a Claim as an Escape Fee Case an appeal may be made against that decision to an Independent Costs Assessor. The procedures in Section 8 shall apply to any such appeal.
- 6.8 Any refusal by us of a request by you to treat a Claim as an Escape Fee Case is excluded from Clauses 27 and 28 of the Standard Terms.
- 6.9 Claims for Escape Fee Cases must be submitted within three months of the Case being reported.

### **Assessment procedures**

- 6.10 Paragraphs 8.8 and 8.57 to 8.68 also apply to the assessment of Controlled Work Cases.
- 6.11 We have the right to Assess all your Claims in accordance with the provisions of the Contract. However, we will not amend any Hourly Rates Claim payable to you as a result of an Assessment except as set out in this rule:
- (a) we will not pay for work that is outside the terms of the Contract;
  - (b) where your Contract is terminated and you do not (or are not permitted to) complete your Cases and matters then:
    - (i) if the Contract terminates under Clause 25.2 of the Standard Terms, or you terminate the Contract pursuant to Clause 25.1 of the Standard Terms, subject to the other provisions of this Paragraph and to any Category Specific Rules, we will pay you in accordance with your Payments, Disbursements and reviewing your (Controlled Work) Annex; or
    - (ii) otherwise, we may pay the lower of the Assessed amount or the Hourly Rates Claim;
  - (c) where more than one Claim has been made for a Case that should, in our reasonable view, have been treated as one Case then we may Assess the Costs of any additional Claims as nil, so that only one Claim is payable. Any appeal or review of such an Assessment under the Specification will proceed on the basis of determining this issue;
  - (d) where you have failed to evidence on file that the relevant criteria in the Merits Regulations and Financial Regulations have been met;
  - (e) where you have failed to retain on file evidence that is described in the Procedure Regulations; or
  - (f) where work is not within the scope of Legal Aid.
- 6.12 We may also take into account the results of any Assessment under Paragraph 6.11 in:

- (a) assessing your performance under this Contract; and
  - (b) deciding whether your work should be subject to quality assessment or another form of Audit.
- 6.13 When we assess a sample of your Controlled Work Claims, we may apply any findings to your other claims for payment for Controlled Work. When we apply findings in this way, we may do so for all Cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:
- (a) since the date the file sample was requested for the last contract compliance audit; or
  - (b) from a date 12 months immediately preceding the date the file sample was requested for assessment on the current Audit;
- whichever is the most recent.
- 6.14 'Findings' for the purposes of Paragraph 6.13 includes not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as:
- (a) claiming excessive time for preparation or attendances;
  - (b) the average percentage reduction on assessment of a sample of your files;
  - (c) claiming for more than the Maximum Hours per Case or Cases which exceed your Maximum Cases; or
  - (d) where we consider the wrong Hourly Rate has been claimed.
- 6.15 When findings (as set out at Paragraph 6.14) are applied to a Claim under these provisions, then we have assessed that Claim.

### **Exceptional Case**

- 6.16 You are authorised, under this Contract, to be paid in accordance with the Cases and Hourly Rates (Controlled Work) Annex for any Exceptional Case that you undertake under this Section 6.

## **SECTION 7 CARRYING OUT LICENSED WORK**

### **7. Scope of Licensed Work**

7.1 In this Section 7, the following expressions shall have the following meanings unless the context requires otherwise and any other terms defined in the Standard Terms shall, if used in this Section 7, have the meaning in the Standard Terms applied to them:

*"Certificate"* means as described in Legal Aid Legislation;

*"Delegated Functions"* means a function of the Director or the Lord Chancellor delegated to you by an Authorisation as specified in the 2013 Specification;

*"Mandatory Electronic Working"* means information in respect of Licensed Work that you must provide to the Director or us electronically through CCMS in accordance with this Specification. Without limitation, examples of the type of information you must provide to us electronically are:

- (a) making applications for determinations and amending Certificates' details (including scope);
- (b) information about the Counsel you have instructed on a Case in respect of Licensed Work (subject to Certificate scope or application for prior authority);
- (c) submitting prior authorities and requests for Payments on Account;
- (d) submitting Claims in respect of Licensed Work;
- (e) appealing or reviewing decisions made by us on Claims in respect of Licensed Work; or
- (f) reviewing or appealing determinations about whether an individual qualifies for civil legal aid.

*"Manual"* means our manual comprising relevant Legal Aid Legislation, the 2013 Standard Terms, the 2013 Specification and other materials which may be relevant to the performance of Contract Work which is Licensed Work and compliance with this Section 7 of the Specification, published by us from time to time;

*"Maximum POA Limit"* means the maximum amount specified by us as payable to you as a Payment on Account;

*"Payment on Account"* or *"PoA"* means a payment made by us, on account of amounts due in respect of Contract Work which is Licensed Work, before we have paid the final Claim for Licensed Work for the relevant Case;

*"2013 Specification"* the 2013 Specification forming part of the 2013 Standard Civil Contract;

"2013 Standard Civil Contract" the 2013 Standard Civil Contract which may be accessed on our website;

"2013 Standard Terms" the 2013 Standard Terms forming part of the 2013 Standard Civil Contract; and

All references to Claims and Cases in this Section 7 shall be to Claims and Cases in respect of Licensed Work.

#### *Undertaking Licensed Work*

- 7.2 Subject to the remaining provisions of this section, this Section 7 of the Specification operates as a licence for you to undertake Licensed Work. Any restrictions on the number of Licensed Work Cases you may undertake will be set out in the Contract for Signature or otherwise in writing. You must report all Case outcomes promptly, fairly and accurately in accordance with the Contract Guide.
- 7.3 A determination that an individual qualifies for civil legal aid provided as Licensed Work will be made by you in accordance with the flowchart set out in Section 1 of this Specification. A list of the Delegated Functions which apply to Licensed Work given to you by the Director in accordance with an Authorisation is set out at Paragraph 7.7.
- 7.4 You may only perform Licensed Work:
- (a) that is within the scope of the Act and for which the Client qualifies in accordance with the Merits Regulations and the Financial Regulations;
  - (b) in accordance with the Procedure Regulations;
  - (c) that is covered by the terms of a Certificate;
  - (d) that is not prohibited by any restriction in your Contract; and
  - (e) where your Cases and Hourly Rates (Controlled Work) Annex authorises you to provide Contract Work in that Category of Law.
- 7.5 You must apply for Licensed Work on a Client's behalf at the appropriate point, and not delay such an application in order to claim a Case as an Escape Fee Case.

#### *Delegated Functions in respect of Licensed Work*

- 7.6 You should exercise the Delegated Functions in every appropriate case and these decisions should not be referred to the Director or anyone else to whom he has delegated his determination making function in accordance with an Authorisation although advice may be sought in cases of difficulty or doubt. These Delegated Functions must in all circumstances be exercised in accordance with the terms of this Contract.
- 7.7 Provided you are authorised in your Cases and Hourly Rates (Controlled Work) Annex to carry out Licensed Work in the relevant Category of Law, and subject to any restriction within Paragraphs 7.8 and 7.9, you may carry out the following actions on behalf of the Director in accordance with an Authorisation:

- (a) make a determination that a Client qualifies for authorised representation provided on an emergency basis;
- (b) amend or refuse to amend a limitation or condition to which a determination in respect of Emergency Representation basis is subject;
- (c) any actions in the Category Specific Rules set out at Sections 9 to 12 of this Specification; and
- (d) any additional actions delegated to you in accordance with an Authorisation.

7.8 The Delegated Functions set out at Paragraph 7.7 are subject to the following:

- (a) **Judicial Review:** you do not have the power to make a determination that a Client qualifies for authorised representation provided on an emergency basis, or to amend or refuse to amend a limitation or condition to which a determination in respect of Emergency Representation is subject, in relation to Judicial Review in any Category of Law, other than in relation to proceedings under Part VII Housing Act 1996 (as amended), section 21 National Assistance Act 1948 (as amended), section 20 Children Act 1989 (as amended), section 47(5) National Health Service and Community Care Act 1990 (as amended), section 19(3) Care Act 2014 or section 36 of the Social Services and Well-being (Wales) Act 2014 unless we have specifically delegated this function to you. You must only exercise such a Delegated Function in relation to such Cases and in such circumstances as we specify;
- (b) **public interest cases:** You do not have the power to make a determination that a Client qualifies for civil legal aid on the grounds that the Case has a significant wider public interest; and
- (c) **Exceptional Case:** You do not have the power to make a determination under section 10 of the Act.

Decisions on public interest are taken by the Director (where necessary after referral to the Special Controls Review Panel).

7.9 The Director may extend or restrict the extent of your Delegated Functions relating to Licensed Work, by varying an Authorisation.

### **Electronic working**

7.10 All communications with the Director or us relating to Contract Work must be made electronically, unless we have notified you that we are prepared to receive communications on paper or otherwise.

7.11 We will introduce Mandatory Electronic Working during the Contract Period and give you at least three months' notice of the date it will take effect.

7.12 When Mandatory Electronic Working is in force under this Contract in accordance with Paragraph 7.11, CCMS will be our primary method of communication with you for Licensed Work. You will submit associated evidence or requested documentation to the Director and/or us using one of the following two methods:

- (a) uploading a file to CCMS in .pdf, .tiff or .rtf format, not exceeding 8MB in size for a single document; or
- (b) submitting information to our central postal hub, in the format we specify and with the system generated cover sheet.

7.13 Pursuant to Paragraph 7.12:

- (a) we or the Director may reject any evidence you provide to us which is not submitted in the form we or the Director require;
- (b) where we or the Director request copies of original documentation, you must make a copy of the original evidence;
- (c) where we ask you to obtain a declaration from your Client we will require you to retain a copy of the original declaration and Client signature on your file. We may request the original signed declaration at any time during or after the Contract Period but no later than six years from the date the Contract ends;
- (d) you must keep original copies of any evidence you could be reasonably expected to retain as evidence of work conducted on the Case. We may request the original evidence at any time during or after the Contract Period but no later than six years from the date the Contract ends; and
- (e) we will provide you with training on how to use the CCMS system and submit associated evidence using our website. We will use the website to notify you of any exceptions to the process, including any alternative methods of submitting information to us.

## **Application procedures**

### *Electronic applications*

7.14 Where you submit an application in respect of Licensed Work electronically you must, where necessary, register your Client's details on our online Client registration system (in accordance with such Contract Guide as we may issue from time to time), and you will be deemed to have certified:

- (a) that your Client has signed a printed copy of the application form;
- (b) you have retained this form on your file;
- (c) you have explained to the Client their obligations and the meaning of their declaration;
- (d) you have given to the Client to keep our leaflets referred to in their declaration and have explained the statutory charge to them;
- (e) you have provided as accurately as possible all the information requested on the application;
- (f) you have seen and retained copies of any documentary evidence referred to in support of the application; and
- (g) your Contract authorises Licensed Work in the proceedings to which the application relates.

### *Case Starts*

- 7.15 This Contract does not restrict the number of Licensed Work Cases you may undertake unless any such restriction has been imposed on you by way of Contract amendment or Sanction and is set out in your Contract. Category Specific Rules may however require a minimum volume of Licensed Work cases.

### *Specific situations*

- 7.16 A Legal Help Case is not justified where on the day that work is carried out you are satisfied that the Merits Regulations, Financial Regulations and the Procedure Regulations are met for a determination that an individual qualifies for Emergency Representation, or other Licensed Work, in relation to the same Case and you determine or intend to determine that the Client qualifies for such work. All work carried out on the day of your determination in relation to the Licensed Work may be claimed under the resulting Certificate. This Paragraph 7.16 shall not prevent the opening of a Case where Legal Help is required on matters not covered by Licensed Work.

### **Financial eligibility**

- 7.17 Where you submit an application for Licensed Work electronically, you will be the person responsible for determining financial eligibility pursuant to the Financial Regulations unless the assessment of means is referred to us at our request or in accordance with Paragraph 7.18.
- 7.18 You must refer an assessment of a Client's means to the Director if you are aware of any of the following circumstances:
- (a) the Client is based overseas;
  - (b) the Client is self-employed, a partner in a business, a company director or a shareholder in a private or limited company;
  - (c) the Client has negative disposable income;
  - (d) there is suspected fraud;
  - (e) the Case involves personal insolvency or there are assets held under a freezing order;
  - (f) there is an interest under a will or trust fund;
  - (g) the Client has access to a third party's assets, assets that have been sold or transferred, or assets are held overseas;
  - (h) there is an apparent aura of wealth;
  - (i) the Client has previously provided false information;
  - (j) the Client has had a previous determination revoked or withdrawn due to non co-operation with a means enquiry; or
  - (k) where the Client's means are subject to an ongoing investigation.

References to "Client" in the above list include any person whose means are to be or may be aggregated with those of the Client under the Financial Regulations.

### **Prior authority**

- 7.19 You may apply in writing to us, in advance on a form we specify, for prior authority for incurring an item of costs where:
- (a) that item of costs is either unusual in its nature or is unusually large;
  - (b) you propose to instruct a Queen's Counsel or more than one Counsel;
  - (c) prior authority is otherwise required under the Specification; or
  - (d) you seek to pay an expert higher rates than are set out in the Remuneration Regulations.
- 7.20 Where you have been granted prior authority, the item of costs will be allowed on Assessment unless it becomes apparent that the authority was obtained as a result of your provision of incorrect information or circumstances have changed materially between the authority being obtained and the costs being incurred. However:
- (a) any prior authority given takes effect subject to any overall limitation on costs (including the Costs Limit) specified in the relevant Certificate; and
  - (b) the fact that you have obtained prior authority for an item of costs must not prevent your seeking to recover the full costs of that item from another party under any relevant inter partes costs order.

### **Use of Counsel**

- 7.21 Other than in relation to the instruction of Queen's Counsel or more than one Counsel, (see Paragraph 7.19(b)), you do not require our authority to instruct Counsel, but Counsel's fees will only be paid to the extent that they are assessed as reasonable and proportionate and within the scope of the Certificate.
- 7.22 All instructions delivered to Counsel must:
- (a) include a copy of the current Certificate which records a determination, where available;
  - (b) include a copy of any prior authority to instruct counsel; and
  - (c) be endorsed with the Certificate reference number, where available.
- 7.23 Where the Certificate has not yet been issued at the point that instructions are delivered to Counsel, a copy must be provided to Counsel within 14 days of your receiving it.

### **Clients with a financial interest in your costs**

- 7.24 Paragraph 5.48 applies also in relation to Licensed Work Cases. In Licensed Work Cases your Client will also have a financial interest in your costs where his/her determination has been revoked.



### **Application of the statutory charge to Licensed Work**

- 7.25 You must not accept instructions to propose an order or settlement or agree a consent order having the effect that money that may be subject to the statutory charge is not paid to you or to us as required by regulations made under section 25 of the Act, or that otherwise may hinder our enforcement or protection of the statutory charge.
- 7.26 In complying with your duty under regulations made under section 25 of the Act to report to us where money or other property is recovered or preserved by your Client (including costs), and in any subsequent communications in relation to the statutory charge, you must provide all relevant information and not seek in any way to mislead us in relation to the application or extent of the statutory charge.
- 7.27 Your retainer under a Certificate in respect of Licensed Work does not extend to making representations to us, Land Registry or Adjudicator of the Land Registry against application, extent or enforcement of the statutory charge in relation to services under that Certificate.
- 7.28 Where you fail to take steps required under Legal Aid Legislation or this Contract to protect the statutory charge, we will be treated as having suffered loss for the purposes of Clause 14.12(b) of the Standard Terms.
- 7.29 In Cases where a proportion of the Client's damages is or may be required to be paid by the Client pursuant to regulations made under section 23(3) of the Act, you must report this to us in the format we specify.

### **Exceptional Case**

- 7.30 You are authorised, under this Contract, to apply for an Exceptional Case in respect of Licensed Work, in the Discrimination and Education Categories of Law only, in accordance with the procedures set out in the Procedure Regulations.

### **Transitional Provisions**

- 7.31 In relation to fees and remuneration rates for Licensed Work, this Specification applies to any application you or your Client make for Legal Aid on or after the Service Commencement Date.
- 7.32 Remuneration under a Certificate granted following an application made prior to the Service Commencement Date will be governed by your Previous Contract specification provided that all forms have been signed by you or your Client before the Service Commencement Date and are received by us within one week of the Service Commencement Date.
- 7.33 Not used.

### **Audited or certified accounts**

- 7.34 In addition to the accounts that you are required to maintain pursuant to Clause 4.1 of the Standard Terms, such accounts must also include details of all Payments on Account received by you in the relevant accounting period in respect of Contract Work which is Licensed Work for which you have not at the

end of such period submitted an invoice to us together with explanatory notes in respect of such accounts.

### **Financial disclosure**

- 7.35 Without limiting Clauses 4.1 and 9.1 in the Standard Terms, if you have exceeded your Maximum PoA Limit you must within 14 days of our request disclose to us such other financial information as we reasonably require about you (including information about your monthly management accounts, Bank Covenants, Bank Facilities and your and your partners and/or directors loan agreements and details of other assets and liabilities) and about Contract Work (and any other work secured by us).

### **Access to the Manual**

- 7.36 You must have either a printed copy of the current Manual or on-line access to it through a recognised licensee of ours.

### **Records you must maintain**

- 7.37 Without limiting Clause 8.3 of the Standard Terms, "Records" includes the results of any Client satisfaction surveys.

### **Sanctions**

- 7.38 Without limiting Clause 24.5 of the Standard Terms, we may by written notice suspend your Delegated Functions (in whole or in part) for the period specified in such notice and/or impose restrictions on the Contract Work that you may perform.

### **Application of Clause 13 to other provisions of the Contract**

- 7.39 For the avoidance of doubt, and without limiting Clause 13.17 of the Standard Terms, the parties agree that the following are not changes for the purposes of Clause 13 (and Clause 13 of the Standard Terms does not apply to them):

- (a) awarding or removing Delegated Functions;
- (b) imposing a Maximum POA Limit,

unless and to the extent that the relevant provision of this Contract setting out such right or obligation expressly applies Clause 13 of the Standard Terms.

### **Your obligation to check Certificates and authorities issued by us in connection with Contract Work**

- 7.40 Where applicable it is your responsibility to check any Certificates and authorities that are issued to you in connection with Contract Work. If after checking a Certificate or authority you have any concerns, you may raise them with the issuing body. No matter what sum is assessed by a court as costs incurred under a Certificate, we have no obligation to pay you for any work that is outside the

scope of a Certificate, or which is in excess of that covered by a limitation or condition on a Certificate, and if any such payment is made to you an equal sum is repayable by you to us.

## **SECTION 8      PAYMENT FOR LICENSED WORK**

### **8.      General Regime**

#### 8.1      Subject to:

- (a)      our and the Court's right to assess Claims for Licensed Work: and
- (b)      our right under this Contract to reduce payments,

we will pay you for Licensed Work which is properly conducted and claimed in accordance with the terms of this Contract at the rates set out in the Remuneration Regulations. All payments are subject to the Category Specific Rules at Sections 9 to 12 of this Specification.

All references to Claims and Cases in this Section 8 shall be to Claims and Cases in respect of Licensed Work.

#### 8.2      We will pay you after our receipt of each individual Case Claim.

#### 8.3      All provisions in this Contract as to the timing of payment for individual Case Claims are subject to Paragraphs 8.4 to 8.9.

### **Licensed Work Claims**

#### 8.4      In respect of Licensed Work:

- (a)      in making a Claim, you must have regard to the content of the relevant Costs Assessment Manual; and
- (b)      you must submit each Claim to us within the time period specified in this Section 8, otherwise, it can be difficult for us to forecast expenditure. Persistent failure to submit Claims within the time periods specified may lead to the issue of Sanctions (including termination) under Clause 24 of the Standard Terms and/or termination under Clause 25 of the Standard Terms;
- (c)      subject to our receipt from you of "all necessary information and payments" in connection with an individual Case Claim (and provided you have complied with your obligations in respect of the bill or Claim and the Case to which it relates) any payment for it due under this Contract will be made no later than 28 days after the "relevant date". Normally, payment will be included in one of the regular settlements that we make, the dates of which are published on our website.

#### 8.5      Subject to Paragraph 8.7, the "relevant date" for the purposes of Paragraph 8.4 is:

- (a)      where a bill or Claim has been assessed by a court, 7 days after compliance and receipt of "all necessary information and payments", as required by Paragraph 8.4; and
- (b)      for any other bill or Claim (including claims for Payments on Account) either:

- i) the date on which we have assessed it or otherwise passed it for payment; or
- (ii) the date of receipt of "all necessary information and payments" and compliance, as required by Paragraph 8.4,

whichever is later. Where there is an appeal against an Assessment, the date of the appeal decision is the date of the Assessment, for the purposes of this Paragraph 8.5.

8.6 In Paragraph 8.4 and 8.5:

- (a) "all necessary information" comprises all information that we require to enable us to perform our functions under the Act, whether required from you or Counsel or an expert you have instructed. Such information may include but is not limited to: correct and properly completed forms; information to enable us to assess the bill or Claim; information to enable a decision to be made as to whether the statutory charge on property recovered or preserved applies or whether there should be a re-assessment of the Client's means; and/or information necessary to demonstrate that this Contract has been complied with and responses to all reasonable queries;
- (b) "all necessary payments" means any payments that, under this Contract, you are obliged to make in respect of the Case and may include payment to us of property recovered or preserved for the Client.

8.7 If you have failed to comply with your obligations in respect of the bill or Claim or the Case to which it relates the relevant date (if later than that provided by Paragraph 8.5) is 14 days after all necessary steps to protect our (and the Client's) position have been completed.

8.8 You must comply with the provisions on claiming and assessment in respect of Contract Work set out in the terms of this Contract, Legal Aid Legislation and the Civil Procedure Rules.

#### *Basis of Assessment*

8.9 All assessments of Contract Work are to be on the Standard Basis as defined by Civil Procedure Rule 44.4(2), subject to the other provisions of this Specification and any Contract Guide.

#### **Fee definitions**

8.10 We will pay for Licensed Work at the Hourly Rates set out in the Remuneration Regulations (also referred to as "Prescribed Rates"). All rates are exclusive of VAT.

8.11 "Prescribed Rates" (being the hourly rates set out in the Remuneration Regulations which we will pay for Licensed Work) also apply to relevant work within detailed assessment proceedings. All rates are exclusive of VAT.

#### **Hourly Rates enhancements**

- 8.12 The following rules apply only to remuneration by way of Prescribed Rates under the Remuneration Regulations. No other form of enhancement or uplift is payable for such work.
- 8.13 The Threshold Test: on assessment of Licensed Work we or the court may allow fees at more than the Prescribed Rate in respect of any item or class of work where it appears, taking into account all the relevant circumstances, that:
- (a) the work was done with exceptional competence, skill or expertise;
  - (b) the work was done with exceptional speed; or
  - (c) the Case involved exceptional circumstances or complexity.
- 8.14 Where we or the court consider that any item or class of work should be allowed at more than the Prescribed Rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions.
- 8.15 In determining the percentage by which fees should be enhanced above the Prescribed Rate we or the court shall have regard to:
- (a) the degree of responsibility accepted by the legal advisor;
  - (b) the care, speed and economy with which the Case was prepared; and
  - (c) the novelty, weight and complexity of the Case.
- 8.16 The percentage above the Prescribed Rate by which fees for work may be enhanced shall not exceed 50%. The exception to this is that in proceedings in the High Court, Court of Appeal, Upper Tribunal or Supreme Court, we or the court may allow an enhancement not exceeding 100% where it considers that, in comparison with work in other proceedings in those courts which would merit 50% enhancement, the item or class of work relates to exceptionally complex matters which have been handled with exceptional competence or speed.
- 8.17 We or the court may have regard to the generality of proceedings to which the relevant Prescribed Rates apply in determining what is exceptional within the meaning of this provision.

### **Fast track proceedings**

- 8.18 Where proceedings are allocated to the fast track as defined in Part 28 of the Civil Procedure Rules:
- (a) the amount payable by us to any advocate, whether from your personnel or a representative instructed by you, shall not exceed the amount of fixed costs allowable under Civil Procedure Rule 45.38;
  - (b) the amount payable by us to any legal representative attending court to assist the advocate shall not exceed the amount allowable under Civil Procedure Rule 45.39(2) regardless of any amounts actually awarded by the court under Civil Procedure Rule 45 VI.

### **Payments on Account**

- 8.19 Your right to apply for Payments on Account for Licensed Work is governed solely by the provisions of Paragraphs 8.20 to 8.30 and Category Specific Rules.
- 8.20 On any Case in respect of Licensed Work, you may apply to us for a Payment on Account of your disbursements incurred, or about to be incurred, under the Certificate.
- 8.21 On any Case in respect of Licensed Work, subject to Paragraph 8.23 and Category Specific Rules, you may apply to us for a Payment on Account of your profit costs incurred under the Certificate provided that:
- (a) an application for a first Payment on Account may not be made earlier than 3 months after the issue of the Certificate;
  - (b) you may make no more than two applications within any 12 months period; and
  - (c) cumulative Payments on Account for profit costs under a Certificate must not exceed 75% of the amount of your incurred profit costs, calculated at the date of each application for the Payment on Account.
- 8.22 When deciding whether to make any Payment on Account, we will exercise our reasonable discretion and are entitled to take into account:
- (a) the limitations on the Certificate; and
  - (b) the financial situation of your account with us.
- 8.23 Your Payments, Disbursements and reviewing your Claims for Payment (Controlled Work) Annex specifies a Maximum PoA Limit. Payment on Accounts will not be made where this would cause the Maximum PoA Limit to be exceeded. If any Maximum PoA Limit is exceeded, the excess is automatically repayable to us. If you become aware that any Maximum PoA Limit is exceeded, you must notify us to enable us to adjust your account (or to require repayment) should we wish to do so.
- 8.24 Category Specific Rules in the Specification may provide different payment terms for a specified Category of Law. If any such provisions state that they override any of the above payment provisions, then they shall do so.
- 8.25 If you are in practice as solicitors, we agree that you may pay Payments on Account in to your office account, if permitted or required to do so under any accounts rules applicable to you.
- 8.26 Any Payment on Account will be an "overpayment or mispayment" under Clause 14.12 of the Standard Terms where:
- (a) it is made in respect of a Claim in breach of Paragraphs 8.21 or 8.23;
  - (b) it is "repayable" under Paragraph 8.27.
- 8.27 A Payment on Account is "repayable" to us when any of the following occurs:
- (a) three years have elapsed since the date of issue of the Certificate for the Case in respect of which the Payment on Account was made;

- (b) three months have elapsed since the Case ended;
  - (c) we have requested information from you about the Case and you have failed to provide it to our reasonable satisfaction within 14 days; or
  - (d) the Payment on Account was on account of third party fees or other disbursements and they have not been incurred within one month of receipt of the Payment on Account (or to the extent that they have not been incurred up to the amount of the Payment on Account, the excess of the Payment on Account is repayable).
- 8.28 If you become aware that any of the events set out in Paragraphs 8.26 or 8.27 has occurred you should notify us within 14 days of becoming aware to enable us to adjust your account (or to require repayment) should we wish to do so and you shall promptly make any repayment requested by us.
- 8.29 Before seeking repayment in respect of an overpayment or mispayment under Paragraph 8.26, we will give you an opportunity to state why we should not do so. If you have made out good reason why we should not do so, then we shall not seek repayment.
- 8.30 Any Payments on Account made to you in respect of a Licensed Work Case become repayable to us on a final assessment of the Claim made in respect of that Case and may be set-off against any payment due to you under Clause 14.11 of the Standard Terms.

### **Assessment procedures**

- 8.31 In respect of Licensed Work, for Claims where the court is responsible for Assessment (in accordance with Paragraph 8.36), you must first submit your Licensed Work Claims for Assessment by the court and when this Assessment is complete you must make a Claim for payment from us within 3 months of receipt by you of the final assessment certificate from the court.
- 8.32 In respect of Licensed Work Claims where we are responsible for Assessment (in accordance with Paragraphs 8.36 to 8.37) you must submit to us a Claim for payment and Assessment on the required form.
- 8.33 All claims for Assessment and payment by us must be submitted within 3 months of the right to claim accruing. The right to claim accrues in the following circumstances:
- (a) when an assessment certificate is issued by the court; or
  - (b) where the Claim is to be assessed by us when:
    - (i) a final order of the court is made for detailed assessment of your costs under this Section 8; or
    - (ii) the later of the date of service of a notice of discontinuance under Civil Procedure Rule 38.3 in respect of the entire proceedings under the determination to which the Certificate relates; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under Civil Procedure Rule 38.4; or



- (iii) an offer to settle is accepted or a payment into court is made under Civil Procedure Rules Part 36 in respect of the entire proceedings under the determination to which the Certificate relates; or
- (iv) if none of (i) to (iii) above apply, the date of the withdrawal of the determination (or, where relevant, the date that the withdrawal has been finally confirmed on appeal).

8.34 We may require you to submit your Licensed Work claims through the Online Service. Where you submit your Claim for costs electronically you will be deemed to have certified that:

- (a) the information provided is correct;
- (b) the work for which the Claim is made has not and will not be the subject of any other claim for remuneration from public funds; and
- (c) where the Client has a financial interest in your Claim, you have complied with Paragraph 8.61.

*Late claiming where your Client has a financial interest*

8.35 If, in a Case where your Client has a financial interest in your Claim you fail to submit your Claim as required in Paragraphs 8.31 or 8.33, we may serve notice requiring you submit your claim within two months of the date of that notice. Where you fail, within the time specified by that notice, either to submit your claim or to provide a satisfactory explanation, we may disallow your Claim to the extent of your Client's financial interest. Any disallowance of your costs under this Paragraph will be treated as subject to the appeal procedures in this Section 8, whether or not the Case falls for assessment by us.

**Court assessment**

8.36 Except where:

- (a) it is or may be necessary for the court to carry out a detailed assessment of costs payable to the Client by another party to the proceedings; or
- (b) having regard to interests of the Client and public funds, the weight or complexity of the Case and all the other circumstances, we consider it appropriate to direct that the costs be subject to detailed assessment,

your Claim for payment for Licensed Work will be Assessed by us.

8.37 A direction under Paragraph 8.36(b) may relate to an individual Case or to any class of Case, identified by the level of costs to be assessed or otherwise. In Cases where costs are to be subject to assessment by the court, detailed assessment proceedings must be commenced within the time specified in the Civil Procedure Rules.

**Rules applying to detailed assessments**

8.38 Costs you incur in detailed assessment proceedings may be included in the Licensed Work Claim to which the detailed Assessment relates and are not

payable separately. The amount of such costs payable shall be as determined by the detailed assessment itself, except as provided by Paragraph 8.39.

- 8.39 Costs claimed may not be claimed under Paragraph 8.38 that relate to the detailed assessment of work covered by a Client's costs order or costs agreement in addition to the costs recovered under the Client's costs order or costs agreement, other than Legal Aid only costs within the definition of 8.33(b) and (c).
- 8.40 The costs you incur in any appeal against a decision made in a detailed assessment may only be claimed from us to the extent that this is ordered by the court hearing the appeal.
- 8.41 You cannot Claim costs under the Certificate for either:
- (a) detailed assessment proceedings (including any appeal) that do not include an assessment of Legal Aid costs unless we have specifically authorised this work at Contract remuneration rates in the interests of recovering public funds; or
  - (b) detailed assessment proceedings in respect of a costs order against the Client, unless an amendment to the Certificate has been specifically granted for this purpose.
- 8.42 For the avoidance of doubt:
- (a) the costs referred to in Paragraphs 8.38 and 8.41 do not form part of the statutory charge and are not subject to the Costs Limit on the relevant Certificate(s); but
  - (b) the costs of preparing and checking a bill of costs do form part of the statutory charge (where it applies to a Case) and are subject to the final Costs Limit on the relevant Certificate.
- 8.43 Where fees of Counsel that you have instructed are reduced on a detailed assessment (or provisional assessment) you must notify Counsel of this reduction within 7 days of the date of that assessment, and subsequently endorse your bill of costs with the date of this notification; where Counsel's fees have not been reduced you should certify that no such notification is necessary.

#### **Costs payable by another party**

- 8.44 This Paragraph 8.44 represents our authority pursuant to section 28(2)(b) of the Act, for you to receive payment from another party under a Client's costs order or Client's costs agreement (as defined in Legal Aid Legislation) and to recover those costs at rates in excess of those provided for in this Contract or any other contract with us. This applies to all Contract Work that you perform under and in accordance with this Contract and applies also to costs recovered in respect of Counsel's fees. It also applies notwithstanding any Costs Limit on a Certificate in Licensed Work Cases.
- 8.45 Paragraph 8.44 does not entitle you to take any form of enforcement action. This must be specifically authorised under Legal Aid Legislation.

- 8.46 Where an order or agreement for a sum of money is payable to the Client, in which the proportion of the sum that represents the damages and the costs are not specified, we do not authorise you to retain any part of the sum, and you must claim the costs of any relevant work from us under the relevant provisions of this Section 8.
- 8.47 Where a Client's costs order or Client's costs agreement has been made you may in addition to the costs under that order or agreement ('inter partes costs') claim from us your Legal Aid only costs, as defined by Paragraph 8.53, at the rates specified in the Remuneration Regulations.
- 8.48 Where you have agreed and received the inter partes costs you may seek Assessment solely of your Legal Aid only costs under the provisions of Paragraphs 8.31 to 8.43. Otherwise, any Assessment of your costs must be in respect of your full Claim.
- 8.49 Unless inter partes costs have previously been agreed, the Assessment of your costs under Paragraph 8.33(b)(i) must be concurrent with the detailed assessment of the inter partes costs.
- 8.50 The time period under Paragraph 8.33 for submitting to us a Claim for assessment under Paragraphs 8.32 or 8.33 may be extended with our agreement, but not beyond 3 months from the point that inter partes costs are agreed.
- 8.51 Where you do not intend to make a Claim in respect of a matter you must report to us on the form specified by us within 2 months of your receipt of inter partes costs.
- 8.52 You must notify us of any Client's costs order or Client's costs agreement within the time period specified at Paragraph 8.33, if you have not already submitted a Claim or reported under Paragraph 8.51 in respect of the matter.
- 8.53 'Legal Aid only costs' are costs:
- (a) of Contract Work not covered by a Client's costs order or Client's cost agreement;
  - (b) of completing our forms and communicating with us; or
  - (c) that have not been allowed on inter parties detailed assessment or the paying party has reasonably refused to pay in agreeing inter parties costs:
    - (i) in respect of which we have granted prior authority under Paragraph ~~7.21~~ 7.19;
    - (ii) in respect of work which we have specifically requested or authorised for the purposes of considering the making, withdrawal or amendment of a determination in respect of Legal Aid;
    - (iii) that represents a reasonable adjustment you have made as a Provider under the terms of the Equality Act 2010;
    - (iv) in respect of the travel expenses of a Client other than to attend court as a witness of fact.

- 8.54 Where a Client's costs order or Client's costs agreement specifies that another party shall pay a proportion of the Client's costs (but not a fixed sum), for the purposes of Paragraph 8.53 work is not covered by that order or agreement in the same proportion that the Client's costs are not payable under that order or agreement.
- 8.55 Where you agree and receive inter partes costs in the circumstances of Paragraphs 8.48 or 8.51 we authorise you pursuant to Legal Aid Legislation to retain those inter partes costs, subject to accounting to us for any interest due under Paragraph 8.56.
- 8.56 Where interest has been received or is payable on inter partes costs, you are entitled to the proportion of the interest which relates to the amount (if any) by which the inter partes costs exceed the amount paid or payable by us in relation to the relevant dispute or proceedings. The remainder of the interest is payable to us.

### **General provisions on claiming and assessment**

- 8.57 You may only claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.
- 8.58 You must submit your Claims in accordance with the terms of any limitations placed upon that Case including, but not limited to, limitations on Certificates. We may reject any Claim you make which does not comply with the rule in this Paragraph 8.58.
- 8.59 Where any item of costs is to be claimed on more than one Case, this fact must be recorded on each of the relevant files and Claims, together with the proportion of time and costs attributed to each matter. Consecutive attendances on the same Client(s) where continuous are to be treated as a single item of costs for the purposes of this rule in Paragraph 8.59.
- 8.60 Whether or not your Client has a financial interest in the Case, in carrying out Contract Work you must endeavour where possible to obtain and pursue a Client's costs order or Client's costs agreement as you would if acting for a privately paying client (including in any detailed Assessment proceedings or negotiations in respect of a Client's costs order or Client's costs agreement), and you must seek to protect the interests of public funds on any detailed assessment of costs payable by another party.
- 8.61 If your Client has a financial interest in any Claim or Assessment they are entitled to make representations in relation to your Claim. Before submitting your Claim for Assessment, whether by the court or us, you must:
- (a) notify your Client that they have a financial interest and explain why;
  - (b) explain that they have a right to make representations and set out how they can make those representations, explaining such other steps that they may take to safeguard their interest;

- (c) provide them with a copy of your bill of costs or Claim for costs; and
  - (d) endorse your bill or Claim indicating that you have complied with the steps in Paragraph 8.61(a) to (c).
- 8.62 Without prejudice to the generality of Paragraph 8.58, you should note the following provisions regarding costs and disbursements:
- (a) you must not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your Contract (such as the information return and the Claim for costs), unless expressly provided by this Contract or Costs Assessment Guidance;
  - (b) you must not claim for time spent on legal research over and above brief checks on the law, unless the Case involves a novel, developing or unusually complex point of law, justifying either legal research by you or the obtaining of an opinion from Counsel;
  - (c) you must not claim for any additional costs incurred by you or your Client because you are based in a Location distant from your Client where it would have been reasonable for your Client to have instructed a Provider located nearer to him or her;
  - (d) you must not claim for the fees of Queen’s Counsel or more than one Counsel unless you have obtained prior authority to instruct Queen’s Counsel or more than one Counsel under Paragraph 7.21. For the avoidance of doubt, prior authority to instruct a Queen’s Counsel is required only where Queen’s Counsel will act as such but not where Queen’s Counsel choose to act and be paid only at junior Counsel rates; and
  - (e) You must not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in the Costs Assessment Guidance.
- 8.63 Where you instruct an expert to deliver services of a type set out in the Remuneration Regulations we will not pay fees in excess of those in Remuneration Regulations unless:
- (a) we consider it reasonable to increase such fixed fees or rates in exceptional circumstances; and
  - (b) we have granted prior authority to exceed such fixed fees or rates on such basis.

Subject to such limits where applicable, the amounts claimed for the provision of expert services must be justified on detailed assessment by the court or Assessment by us in the normal way. For the purpose of this Paragraph 8.63, “exceptional circumstances” means that the expert’s evidence is key to the Client’s Case and either the complexity of the material is such that an expert with a high level of seniority is required; or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence. We will pay expert services of a type not listed in the

Remuneration Regulations at such rate as we may from time to time determine and in considering the same we will have regard to the rates set out in the Remuneration Regulations and we may require you to provide us with a number of quotes in respect of the provision of the relevant service.

- 8.64 The list of non-allowable disbursements set out in Paragraph 18 of your Payments, Disbursements and reviewing your Claims for Payment (Controlled Work) Annex applies to Cases in respect of Licensed Work, save in relation to court fees. The maximum rates for experts' travel time and costs set out in Remuneration Regulations also apply to Cases in respect of Licensed Work.
- 8.65 Any Assessment undertaken by us or by the Assessor on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rates as set out in the Remuneration Regulations.
- 8.66 For Licensed Work even if the court undertakes the Assessment, we are only bound to pay costs in accordance with Paragraph 8.65.
- 8.67 On any Assessment of your costs, Counsel's fees shall not be reduced by virtue of the Costs Limit in the determination unless Counsel's fees alone exceed the final limitation on the Certificate, in which case Counsel's fees are paid up to that limitation and no further payment is made except in relation to any costs of detailed Assessment proceedings. You will then be responsible for the balance of Counsel's fees, unless you had, at all material times, notified Counsel of the relevant Costs Limit.
- 8.68 We may, however, impose a separate Costs Limit in respect of Counsels' and experts' fees.

## **Appeals**

- 8.69 If you or Counsel are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule in Paragraph 8.69 and its related Contract Guide shall include "Assessors" in Cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 8.70 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 8.71 Failure to comply with any of the requirements set out in Paragraph 8.70 means that you accept our decision and lose your right to dispute it.
- 8.72 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from us then you have the right, within 14 days, to provide a written response to them.

8.73 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:

- (a) in your case, you submit your written appeal; and
- (b) in our case, at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply).

Either party may challenge such an application for an oral hearing to the Assessor within 7 days of the application being made.

8.74 The Assessor will consider the request and notify both parties of his or her decision.

8.75 If:

- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
- (b) having considered a party's request for an oral hearing, he or she is of the opinion that the request should be granted,

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

8.76 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone he or she may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

8.77 The Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.

8.78 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, the Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 6.13 ~~4.39~~. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

- 8.79 Where in dealing with an appeal on the papers only the Assessor identifies new issues the Assessor will, as he or she considers appropriate in the circumstances, either:
- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
  - (b) refer the matter back to us for a new decision.

*Points of Principle of General Importance*

8.80 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, us or the Assessor may seek certification of a Point of Principle of General Importance.

8.81 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:

- (a) in your case, by sending your application to us and, if one has already been appointed and their identity notified to you, to the Assessor. We will, within 7 days of receipt of your application, if an Assessor has been appointed but their identity not notified to you, forward the application to the Assessor also;
- (b) in our case, by sending a copy of that , application to you and to the Assessor (if appointed); and
- (c) in the case of the Assessor, by sending the application to us. We will, within 7 days of receipt notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

8.82 All applications for certification of Points of Principle of General Importance, whether made by you, us or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

8.83 Upon receipt of an application for certification of a Point of Principle of General Importance we will decide whether the matter should progress to the Costs Appeals Committee. We may refuse to refer an application to the Costs Appeal Committee where the proposed Point of Principle of General Importance:

- (a) would conflict with a provision of contract or legislation; or
- (b) is not capable of forming a principle of costs assessment of general application,

and our decision shall be final. We will give written reasons of any decision we make to refuse to refer such an application.

8.84 If we consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.



- 8.85 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.
- 8.86 On considering an application under this provision in this Paragraph 8.86, the Costs Appeals Committee will either:
- (a) decide whether to certify the Point of Principle of General Importance sought and, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him or her to do so; or
  - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
- 8.87 You, where appropriate, we and/or the Assessor will be notified of our decision and/or that of the Costs Appeals Committee.
- 8.88 Any Point of Principle of General Importance certified by the Costs Appeal Committee, whether or not made under this Contract, is binding on all future Assessments carried out by us and any appeals in relation to such Assessments.

#### **Final payments to Counsel and experts**

- 8.89 Where you instruct Counsel in relation to Licensed Work, other than work covered by Remuneration Regulations and subject to Category Specific Rules, you are responsible for claiming Counsel's fees as a disbursement, which will be subject to Assessment by us or by the court under this Specification. However, we will pay Counsel directly, save where any Category Specific Rules or individual case contract specifies otherwise and subject to any overall Costs Limit on the Certificate or Counsel specific limitation.
- 8.90 We may, however, introduce or pilot a requirement for:
- (a) Counsel and/or experts to claim their fees directly from us and to provide that no final payments shall be made to you, Counsel or experts until all claims have been received; or
  - (b) specific experts to be instructed by you pursuant to changes in legislation or the justice system.

#### **Exceptional Case**

- 8.91 You are authorised, under this Contract, to be paid in accordance with the Remuneration Regulations for any Exceptional Case that you undertake under this Section 8.

**SECTION 9      HOUSING AND DEBT**

9.

**This part of the Specification sets out the rules relating to cases undertaken in the Housing and Debt Categories of Law. On 1 April 2013 the provisions of the Act will come into force. Providers will therefore need to satisfy themselves before undertaking work in either of these Categories that the work is within the scope of this Contract. This part of the Specification sets out the rules relating to Cases undertaken in the Housing and Debt Categories of Law.**

**Housing and Debt are separate Categories of Law under this Contract but have a combined Supervisor Standard**

References in the Contract Specification to Part 7 of the Housing Act 1996 (or to provisions within Part 7 of the Housing Act 1996) include reference to Part 2 of the Housing (Wales) Act 2014 (or equivalent provisions within Part 2 of the Housing (Wales) Act 2014).

*Combined Supervisors’ Legal Competence Standard for Housing and Debt*

9.1      At any time during the Contract the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the combined Housing and Debt case Categories in Table One below:

<b>Table One</b>		
	<b>Housing and Debt case Categories</b>	<b>Minimum number of case files required</b>
1	Possession/Repossession: Rent arrears Mortgage arrears Other possession (including nuisance, returning owner etc.)	5 case files.
2	Homelessness	3 case files
3	Private disrepair Public disrepair EPA – statutory nuisance	2 case files from any in the list

9.2      At any time during the Contract the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 3 Case types in Table Two below:

<b>Table Two</b>		
	<b>Housing and Debt case type</b>	<b>Minimum number of case files required</b>
1	Case which required representation	3 examples in possession cases, and 1 example of a homelessness case or 1 example of a housing disrepair case
2	Case which required the ability to recognise the possibility of Judicial Review proceedings (including the purpose and the Client's role)	1 case file
3	Case which required the ability to recognise a possible contravention of the rights and freedoms expressed in the European Convention on Human Rights 1950, as given effect in the Human Rights Act 1998 (as amended)	1 case file

- 9.3 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraphs 9.1 and 9.2. The same case file can be used to demonstrate compliance with Paragraphs 9.1 and 9.2.
- 9.4 Prior to the appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 9.1 and 9.2.
- 9.5 Where a Supervisor has not conducted a mortgage arrears possession case in the past 12 months they must demonstrate how they have maintained their knowledge of mortgage possession cases.
- 9.6 Where a Supervisor has not conducted representation in a disrepair case in the past 12 months they must demonstrate how they have maintained their knowledge of housing disrepair litigation.
- 9.7 The Supervisor must take account of any changes in legislation and case law and maintain access for the duration of the Contract to the following required texts:
- (a) subscription to at least 1 nationally published specialist journal containing updates on housing case law and statutes;
  - (b) subscription to at least 1 (updated) housing encyclopaedia;
  - (c) access to current edition of Child Poverty Action Group Debt Handbook;
  - (d) demonstrated access to specialist housing law reports;

- (e) current copy of the Civil Procedure Rules (including practice directions and supplements).

### **Housing specific rules**

#### *Expert reports in housing disrepair Cases*

- 9.8 In a disrepair Case you must not instruct an expert to prepare a report outside the procedures of the pre-action disrepair protocol (as set out in the Civil Procedure Rules) unless:
- (a) the report is required urgently to seek an injunction; or
  - (b) it appears the condition of the property may constitute a statutory nuisance, the landlord has been given notice of the condition and a request for remedial works within a reasonable period of time and that time period has elapsed and the landlord has not made arrangements to take appropriate action.

For the avoidance of doubt this provision does not apply in relation to a disrepair counterclaim to possession proceedings or threatened proceedings based on rent arrears.

#### *Case rules*

- 9.9 A single Case should encompass investigation, where appropriate, of both civil remedies, including where appropriate an application for Licensed Work and (where relevant) possible proceedings in the magistrates' court under the Environmental Protection Act 1990.

#### *Homelessness Cases*

- 9.10 Legal Help given in relation to homelessness must be provided on a specific legal issue or issues and should not cover practical matters such as identifying accommodation agencies or making a referral to them.
- 9.11 The general rule is that all steps within the course of a homelessness application should be dealt with under a single Case. This is subject to the detailed provisions:
- (a) A potential interim application for Judicial Review, such as in relation to the failure of the local authority to accept an application, make enquiries, provide interim accommodation or notify a decision, will not justify a separate Case. However, where both:
    - (i) the prospects of success of the proposed challenge appear to satisfy regulation 56 of the Merits Regulations or would justify seeking counsel's opinion under regulation 40(1)(b) of those Merits Regulations; and
    - (ii) it is justifiable to dispense with the pre-action protocol for Judicial Review,

then the work relating to the proposed Judicial Review may be carried out under a grant of Emergency Representation.

- (b) Where following a request for a review under section 202 Housing Act 1996 ('the Housing Act'), the local authority remits the decision for further consideration or investigation, Legal Help pending the further decision should be provided under the existing Case.
- (c) Where following a request for review under section 202 of the Housing Act the local authority reaches a decision that confirms the original decision on any issue against the interests of your Client or confirms a previous decision in relation to a referral of your Client to another authority, or fails to notify a decision within the period required by regulations under section 203(7) of the Housing Act:
  - (i) A new Case would not be justified in relation to an appeal under section 204 of the Housing Act. If the prospects of success of such an appeal appear to satisfy regulation 56 of the Merits Regulations, or justify obtaining Counsel's opinion under regulation 40(1)(b) of those Merits Regulations, you may pursue or grant Emergency Representation.
  - (ii) A separate Case would not be justified in relation to an appeal or potential appeal under section 204A of the Housing Act in relation to interim accommodation.
  - (iii) If, following the issue of an appeal under section 204 of the Housing Act the decision is subsequently remitted for reconsideration by the local authority by order or agreement, a new Case may, subject to this Paragraph, be justified to provide further Legal Help.
  - (iv) Where on appeal under section 204 of the Housing Act the decision of a local authority is varied by order or agreement, Legal Help required in relation to enforcement of any duty arising from the new decision may be provided under a new Case.
  - (v) A new Case will not be justified where an appeal issued pursuant to section 204(1)(b) is compromised on the basis that the local authority completes its review and notifies its review decision.
- (d) Subject to the Legal Aid Legislation, a new Case may be opened to assist the Client in requesting a review, under section 202(f) of the Housing Act, of accommodation offered by a local authority, but not to provide general advice as to the risks of refusing an offer of accommodation or the Client's rights in relation to requesting a review of such an offer.
- (e) Any issues relating to compliance by a local authority with any duty arising from its decision under section 184 or section 202 of the Housing Act should be addressed under the existing Case. Where the matter is reasonably closed on the basis that it appears that the local authority is complying or has stated how it will comply with such duty or duties, and subsequently further significant legal work is justified as a result of the authority's persistent failure to do so, further Legal Help may be carried out under a new Case.
- (f) A new Case may be opened where a threat of Judicial Review is justified in relation to a failure of the authority to protect the Client's property pursuant to sections 211 and 212 of the Housing Act.

9.12 For the avoidance of doubt:

- (a) Legal Help relating to the terms and conditions (in particular alleged rent arrears) of the Client's occupation of accommodation provided under Part VII of the Housing Act must not be carried out under Cases relating to the Client's homelessness application, other than where this work concerns questions under the Housing Act of the suitability of such accommodation or otherwise to the discharge of an interim duty of the local authority;
  - (b) Legal Help in relation to a decision by a local authority that its duty towards the Client has been discharged under section 193(6) or 195 (4) of the Housing Act, and/or any subsequent fresh homelessness application, may be provided under a new Case.
- 9.13 A separate Case should not be opened simply to confirm that your Client wishes to apply for accommodation under Part VI of the Housing Act at the same time as pursuing his or her homelessness application. Separate Cases for concurrent applications under Part VI and Part VII of the Housing Act will only be justified where substantially different issues arise in the two applications and there is sufficient benefit to the Client in carrying out work concurrently in respect of both applications.

#### Exceptional Cases in the Housing or Debt Categories

- 9.14 Any applications for an Exceptional Case in the Housing or Debt Categories can only be made by CLA Providers whose Cases and Hourly Rates (Controlled Work) Annex permits them to provide Contract Work in the relevant Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Housing and Debt Categories, Exceptional Case work carried out under this Contract is limited to Controlled Work and payments for any Exceptional Case work will be made in accordance with the provisions of Paragraph 6.16. There are no Delegated Functions to make a determination in respect of an Exceptional Case, save for the means test aspect of a Legal Help Case.

**Section 10 - Education**

**10. Supervisors’ Legal Competence Standard**

10.1 At any time during the Contract, the Supervisor must, in the previous twelve months, have undertaken work on the minimum number of cases in the Education Case categories in Table One below:

<b>Table One</b>		
<b>Legal Competence Standard for Supervisors</b>		
	<b>Education Case category</b>	<b>Minimum number of case files required</b>
1	<p><b>Special Educational Needs:</b></p> <ol style="list-style-type: none"> <li>1. Preparation of an appeal to the tribunal;</li> <li>2. General advice/assistance pre-assessment;</li> <li>3. Advice/assistance on an Assessment or Statement;</li> <li>4. Advice on appealing/reviewing a tribunal decision; or</li> <li>5. Advice on enforcement of a Statement of Provision.</li> </ol>	4 case files from 1 required, plus 4 case files drawn from the rest of the list
2	<p><b>Disability Discrimination:</b></p> <ol style="list-style-type: none"> <li>1. Advice/assistance on disability discrimination issues in educational establishments;</li> <li>2. Advice/assistance on an appeal to the First-tier Tribunal; or</li> <li>3. Advice/assistance on appealing/reviewing a tribunal or appeal panel decision.</li> </ol>	2 case files from any in the list
3	<b>Discrimination (other):</b>	2 case files from any in the list

**Table One**

**Legal Competence Standard for Supervisors**

	<b>Education Case category</b>	<b>Minimum number of case files required</b>
	1. Admission; 2. Exclusion; or 3. Provision of Services	

10.2 At any time during the Contract the Supervisor must, in the previous twelve months, have undertaken work on the minimum number of cases in each of the 4 Case types in Table Two below:

**Table Two**

	<b>Education Case type</b> <b>Skills/Procedure/Knowledge</b>	<b>Minimum number of case files required</b>
1	Representation or attendance at a First-tier (Special Educational Needs and Disability) Tribunal;	4 case files
2	Explaining Administrative Court remedies; or	2 case files
3	Case which required the ability to recognise a possible contravention of the rights and freedoms expressed in the European Convention on Human Rights 1950 as given effect in the Human Rights Act 1998.	1 case file

**Exceptional Cases in the Education Category**

10.3 Note that any applications for an Exceptional Case in the Education Category can only be made by CLA Providers whose Cases and Hourly Rates (Controlled Work)



Annex permits them to provide Contract Work in the Education Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Education Category, payment for Exceptional Case work carried out under this Contract will be in accordance with the provisions at Paragraph 6.16 (Controlled Work) and Paragraph 8.95 (Licensed Work). There are no Delegated Functions to make a determination in respect of an Exceptional Case, save for the means test aspect of a Legal Help Case.

**Section 11 - Discrimination**

**11. Supervisors’ Legal Competence Standard**

11.1 At any time during the Contract, the Supervisor must, in the previous twelve months, have undertaken work on the minimum number of cases in the Discrimination Categories in Table One below:

<b>Table One</b>		
<b>Legal Competence Standard for Supervisors</b>		
	<b>Discrimination Case category</b>	<b>Minimum number of case files required</b>
1	<p><b>Direct or indirect discrimination at work:</b></p> <ol style="list-style-type: none"> <li>1. Age;</li> <li>2. Disability;</li> <li>3. Gender reassignment;</li> <li>4. Marriage and civil partnership;</li> <li>5. Pregnancy and maternity;</li> <li>6. Race;</li> <li>7. Religion or belief;</li> <li>8. Sex; or</li> <li>9. Sexual Orientation.</li> </ol>	4 case files from any in the list
2	<p><b>Harassment at work:</b></p> <ol style="list-style-type: none"> <li>1. Age;</li> <li>2. Disability;</li> <li>3. Gender reassignment;</li> <li>4. Marriage and civil partnership;</li> <li>5. Pregnancy and maternity;</li> <li>6. Race;</li> <li>7. Religion or belief;</li> <li>8. Sex; or</li> <li>9. Sexual Orientation.</li> </ol>	2 case files from any in the list

**Table One**

**Legal Competence Standard for Supervisors**

	<b>Discrimination Case category</b>	<b>Minimum number of case files required</b>
3	Cases involving arguments about equality of terms.	2 case files
4	Cases involving arguments about reasonable adjustments.	1 case file

11.2 At any time during the Contract the Supervisor must, in the previous twelve months, have undertaken work on the minimum number of cases in each of the 4 case types in Table Two below:

**Table Two**

**Skills/Procedure/Knowledge**

	<b>Discrimination Case type</b>	<b>Minimum number of case files required</b>
1	Representation at full hearings.	1 case file
2	Advice to Client about the merits of a review/appeal to the EAT or review of an ET decision.	1 case file
3	Consideration of procedural points, for example:  1. Application for discovery; 2. Representation at a preliminary hearing; or 3. Request for further and better particulars or written answers to questions.	1 case file

**Table Two**

**Skills/Procedure/Knowledge**

	<b>Discrimination Case type</b>	<b>Minimum number of case files required</b>
4	Advice to the Client about enforcing an award.	1 case file
5	Cases which required the ability to recognise a possible contravention of the rights and freedoms expressed in the European Convention on Human Rights 1950 as given effect in the Human Rights Act 1998.	1 case file

**Authorised Litigator**

- 11.3 During the Contract Period, unless your Contract for Signature specifies an employed Authorised Litigator, you must have access to an Authorised Litigator to enable you to perform your obligations under this Contract in the Discrimination Category of Law.

**Exceptional Cases in the Discrimination Category**

- 11.4 Note that any applications for an Exceptional Case in the Discrimination Category can only be made by CLA Providers whose Cases and Hourly Rates (Controlled Work) Annex permits them to provide Contract Work in the Discrimination Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Discrimination Category, payment for Exceptional Case work carried out under this Contract will be in accordance with the provisions at Paragraph 6.16 (Controlled Work) and Paragraph 8.95 (Licensed Work). There are no Delegated Functions to make a determination in respect of an Exceptional Case, save for the means test aspect of a Legal Help Case.

## **Section 12 - Family Specification**

### **PART A - GENERAL REMUNERATION**

- 12.1 This part of the Specification sets out the rules in relation to Cases undertaken in the Family Category of Law.
- 12.2 Note that any applications for an Exceptional Case in the Family Category can only be made by CLA Providers whose Cases and Hourly Rates (Controlled Work) Annex permits them to provide Contract Work in the Family Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Family Category, Exceptional Case work carried out under this Contract is limited to Controlled Work and payment for that work will also be made in accordance with the provisions at Paragraph 6.16. There are no Delegated Functions to make a determination in relation to an Exceptional Case, save for a means test aspect of a Legal Help Case.

## **PART B – Care and Supervision proceedings**

### **Definitions**

“s31 Care Proceedings” means proceedings or potential proceedings under section 31 of the Children Act 1989.

“Child”, in relation to this Paragraph 12, applies where you represent the Child who is the subject of the proceedings.

“Parent” applies where you represent the parent of such a Child or a person who has parental responsibility for such a Child.

### **Family Help (Lower) – Non-means tested**

12.3 A determination that a Client qualifies for Family Help (Lower) may only be made where all criteria at Regulation 35 of the Merits Regulations are satisfied. In addition, in potential s31 Care Proceedings, non-means tested Family Help (Lower) will be available where the following conditions are satisfied:

- (a) the local authority has given written notice of potential s31 Care Proceedings in accordance with the DCSF/Welsh Assembly government guidance issued under the Children Act 1989 guidance and regulations, Volume 1, but no proceedings have yet been issued (application for an Emergency Protection Order does not count as issue of proceedings for this purpose);
- (b) your Client is a Parent (as defined above); and
- (c) your Client requires advice and assistance with a view to avoiding the proceedings, or narrowing and resolving any issues with the local authority.

## **PART C – PRIVATE LAW MATTERS**

### **Private Law Definitions**

12.4 “Private Law Work” is all work within the Family Category other than a “public law children case” as defined in the Merits Regulations. In this Part of the Family Specification, the following definitions apply:

- (a) “Aspect” means one of the three possible Aspects of Private Law Work, namely Domestic Abuse, Children and Finance. Any Private Law Work which does not fall within Domestic Abuse or Children will be treated as falling within the Finance Aspect;
- (b) “Domestic Abuse” or “Domestic Abuse Proceedings” means Cases considered under Regulation 67 of the Merits Regulations or services relating to a Family Dispute which, if it proceeded to Legal Representation, would be considered under that section of the Code. This includes, but is not limited to, proceedings for:
  - (i) A forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007, and
  - (ii) A female genital mutilation protection order under the Female Genital Mutilation Act 2003;

- (c) "Private Law Children" or "Children" means any case considered under Regulation 68 of the Merits Regulations or any case which if it proceeded to Legal Representation would be considered under that Regulation;
- (d) "Private Law Finance" or "Finance" means any case considered under Regulation 69 of the Merits Regulations or services in relation to a family dispute which if the case proceeded to Legal Representation would be considered under that Regulation.

### **Criteria for Family Help (Lower)**

12.5 You may only make a determination that a Client qualifies for Family Help (Lower) where all relevant criteria in the Merits Regulations, Financial Regulations and Procedure Regulations are satisfied including the criteria in Regulation 35 of the Merits Regulations. A Client will only qualify for Family Help (Lower) in those Family Disputes ("Family Disputes" having the meaning in Regulation 2 of the Procedure Regulations and Regulation 2 of the Merits Regulations for the purpose of this Paragraph 12.5):

- (a) which involve more than simply taking instructions from and advising the Client, and providing any follow up written or telephone advice;
- (b) where you are involved in substantive negotiations with a third party (either by conducting the negotiations yourself or by advice and assistance in support of mediation);
- (c) where the dispute, if unresolved, would be likely to lead to family proceedings;
- (d) which do not primarily concern processing a divorce, nullity, judicial separation or dissolution of a civil partnership; and
- (e) which do not primarily concern advice relating to child support.

### **Cases with Finance, Children and/or Domestic Abuse issues**

12.6 A Client may be provided with a particular Form of Civil Legal Aid (as described in Paragraph 1.14 above) separately for different Aspects of a Case, but the criteria in the Merits Regulations must be considered and satisfied for each Aspect separately. All work carried out must be recorded against the Aspect to which it relates and if work relates to more than one Aspect, the time spent must be apportioned equally between each such Aspect.

### **Court fees**

12.7 Court fees are an allowable disbursement under Family Help (Lower) only where such fees are incurred for the purpose of obtaining a consent order. In all Cases, court fees may only be incurred where they are a reasonable and proportionate step which satisfies the reasonable private paying individual test (regulation 7 of the Merits Regulations).

## **Help with Family Mediation**

- 12.8 You may only provide Help with Family Mediation when all the relevant criteria contained in the Merits Regulations are satisfied. "Family Mediation" is defined in the Merits Regulations. To be participating in Family Mediation the matter must have been assessed as suitable for Family Mediation and both parties must have attended at least one session of mediation. Regulation 38 of the Merits Regulations confirms that attendance at an assessment meeting only would not satisfy the criteria. Evidence that the Client is, or has been participating in Family Mediation in the previous three months must be retained on the file.
- 12.9 You may only open one Case including Help with Family Mediation in respect of a single Case, regardless of the number of Clients you are representing who are taking part in the Mediation process or the number of different issues or Aspects covered by the Mediation.
- 12.10 You may not make any Claim for Help with Family Mediation if you have provided Family Help under this Contract or Family Help and / or Legal Representation under another contract, in relation to the same Family Dispute within the previous six months. If you provide Family Help (Lower) within six months of a determination being made in relation to Help with Family Mediation in relation to the same Family Dispute, any Claim made for Help with Family Mediation will be recouped from you.

## **PART E – OTHER PROVISIONS**

### **Family Service Standards**

#### *Supervisors' legal competence standard*

- 12.11 The Supervisor must be either be:
- (a) a member of the Law Society's Family Law Accreditation Scheme;
  - (b) a member of the Law Society's Children Law Accreditation Scheme; or
  - (c) a Resolution Accredited Specialist or have successfully completed Part I (core assignment) of the Resolution Specialist Accreditation Scheme.

### **Minimum Supervisor Ratio**

- 12.12 When providing Family services you must maintain a ratio of employing at least one employed full time equivalent Supervisor for every four full time equivalent Caseworkers (see Paragraph 4.24 for the rules on who counts as a Caseworker for these purposes) at each Office from which you are delivering work in the Family Category.

### **Referral to Local Support Services**

- 12.13 You must have appropriate arrangements in operation to enable you, in appropriate Cases, to refer Clients to local family support services. You should hold written details of such services as are locally available, including:
- (a) local authority family support services;



- (b) any providers of Family Mediation services;
- (c) any relevant counselling and relationship guidance services; or
- (d) any support services for victims of domestic abuse.

### **Separate Cases**

- 12.14 It is in the nature of family Cases for Clients to have more than one Family Dispute at any given time. Multiple Cases may not be claimed for a single Client, except in accordance with the provisions of this Specification.
- 12.15 Except as provided below, you may not have more than one Legal Help Case opened for a Client in the Family Category. As with other Categories of Work, where a Legal Help Case has been concluded in the Family Category you may not start a new Case in the Family Category for that Client unless the conditions set out in the Case rules at Paragraphs 5.20 to 5.39 are satisfied.
- 12.16 An exception to the rule in the first sentence of Paragraph 12.15 is that separate Cases may be opened where they relate to Family Disputes which are entirely separate (typically because they arise out of different family relationships) and which would, if they resulted in proceedings, be issued and heard separately.
- 12.17 Where Legal Help has been provided, a determination that the Client qualifies for Family Help (Lower) or two determinations of Family Help (Lower) in Cases which have both Children and Finance Aspects, do not count as a new Case. A Client may never be in receipt of more than two determinations in relation to Family Help (Lower) at any time.
- 12.18 Where Family Help (Lower) has been concluded, you may not provide Family Help (Lower) for the same Aspect (Children or Finance) for the same Client unless the conditions set out in the Case rules referred to above are satisfied.

### **Experts working with Children**

- 12.19 Where you are instructing any Approved Third Party, expert or other person who will, or be likely to, work or engage direct with a Child/children in carrying out your instructions you must make it a term of their engagement that all those likely to work with or coming into direct contact with a Child/children have either been subject to appropriate Criminal Records Bureau checks or have been registered with the Independent Safeguarding Authority. In either Case you must make a term of their engagement that you are entitled to ask for confirmatory evidence to be provided.

### **Independent Social Work**

- 12.20 The costs of and expenses relating to independent social work enquiries or expertise, whether provided by Cafcass, CAF/CASS Cymru, a guardian ad litem or any other person, is not an allowable disbursement where such work is provided outside England and Wales.
- 12.21 In all other Cases, if independent social work expertise is claimed as a disbursement, it may not be claimed at a rate in excess of such rates as the Director may from time to time specify on the website. Such rates will be

comparable to the rates usually payable for such services by Cafcass or CAFCASS Cymru.